

# LABOR IMPLICATIONS OF RAILROAD SALES

Y 4. L 11/4: S. HRG. 103-732

Labor Implications of Railroad Sale...

## HEARING OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

EXAMINING ALL THE AVAILABLE OPTIONS, WHAT THEY MEAN AND  
HOW WE MIGHT MEET OUR COMMON GOALS. GATHERING THE IN-  
FORMATION NECESSARY TO BUILD A COMMON UNDERSTANDING OF  
THE SITUATION FACING THE CV AND ITS WORKERS

JULY 5, 1994 (ST. ALBANS, VT.)

Printed for the use of the Committee on Labor and Human Resources

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# LABOR IMPLICATIONS OF RAILROAD SALES

TUESDAY, JULY 5, 1994

U.S. SENATE,  
COMMITTEE ON LABOR AND HUMAN RESOURCES,  
St. Albans, VT.

The committee met, pursuant to notice, at 4:00 p.m. in St. Mary's Parish Hall, St. Albans, VT, Senator Jeffords presiding.

Present: Senator Jeffords and Representative Bernard Sanders.

## OPENING STATEMENT OF SENATOR JEFFORDS

Senator JEFFORDS. Please take your seats. I expect we may have a long length of time. Please may I have quiet.

This is an official hearing of the U.S. Senate, and therefore we will be utilizing the rules of the U.S. Senate in the proceedings. So, I would ask for your cooperation in that regard.

This does mean some slightly different proceedings than you may have been used to. This hearing will be carried out with the witnesses testifying and I will ask them the questions. There will be no questions from the floor.

Senator Leahy is not able to be here. He will have a statement which will be made part of the record.

Also, Governor Dean is unable to be here; he will have a statement that will be made a part of the record.

Congressman Sanders is with us. He will be testifying first, and although it's not covered directly by the rules of the Senate, I would invite him to come to the table and also participate in the questioning.

Each witness' testimony will be restricted to 5 minutes. We have lights here: green stays on for 4 minutes, yellow for 1 minute and then red shines, and then there is a gunshot after that. [Laughter.] But anyway, so we want to try to keep it in order because I want to leave as much time as possible for those who wish to participate in the proceedings by testifying at the end of the regular panels that we have.

On the first panel we have Mayor Deslauriers and Congressman Sanders; we have the second panel with the members—let's see, let me read them off here, go through them.

The second panel will be Henri Rush, the General Counsel for the Interstate Commerce Commission. This will be very important testimony, and I hope you listen carefully because I want to make sure what we do today is not only for my committee but for all people here to understand what the powers and the purposes are of the ICC, and what role they will and can take in participating in these proceedings.

The third panel will be members representing the workers; James Concannon, District Chairman of the Transportation Union Local 717; Ed Garvey, President of Labor Strategies, Inc. and Larry Thornton, General Chairman of the Brotherhood of Railway Car-men.

And on the fourth panel will be Robert Walker, Vice President of Grand Trunk Corporation; Mr. Bruce Flohr, President of RailTex Service Company, Inc.; and Roger Desrosiers, Chief Executive Officer, Northeast Warehousing and Distribution, Limited.

Then there is a sign-up sheet over at the table. Only those people that are signed up will be allowed to participate in that period, so if you haven't signed up, we will give you another few minutes to do so. At the end of the period of the regular testimony I will—or my staff in the meantime will calculate the number of people that are desirous of testifying.

We have allowed time to go through 6:30 p.m. this evening. I have other commitments this evening, and thus we will divide the amount of time available between the number of you who wish to speak and you will be allowed that time. Usually that comes out to a minute or 2 minutes, so hopefully you will be able to guide yourself accordingly.

#### PREPARED STATEMENT OF SENATOR JEFFORDS

Good afternoon ladies and gentlemen, welcome to this hearing of the U.S. Senate Subcommittee on Labor regarding the labor implications of railroad sales. I am very pleased to be here with you today, and I hope that in the time available we will be able to have an informative and productive discussion of the issues.

For the past decade or more, the railroad industry, like many other American industries, has undergone a substantial amount of consolidation and change. While this has occurred across the Nation, the event that brings us together today is the situation regarding our own Central Vermont Railway.

As you all know, there is a pending sale of the CV to a subsidiary of the RailTex Service Company. The sale involves a substantial reduction in the number of jobs on the CV—from roughly 178 to 78 jobs—and has caused great concern for the CV employees, their families, the people of St. Albans and those of us who represent them.

I hate to see jobs lost, and I hate to see railroads lost. As somebody who watched the Rutland Railway dismantled, I do not want to see a similar chain of events befall the CV.

The purpose of today's hearing is to gather the information necessary to build a common understanding of the situation facing the CV and its workers. I want to examine all of the available options, what they mean, and how we might meet our common goals.

I believe those goals are threefold. First, we want to keep the railroad going. Second, we want to keep as many people on the job as we possibly can. And third, recognizing that some job loss is probably inevitable, we want to give as much help as we can to those who lose their jobs.

Because there has been a great deal of misinformation and misunderstanding on these issues and their implications, we have assembled a group of witnesses who can speak authoritatively not



only on the CV sale, but also on the procedures to be followed by the Interstate Commerce Commission in evaluating that proposal and the recent history of short line rail sales across the country.

I look forward to their testimony and will listen to it carefully in an effort to find the best resolution possible. I invite everyone to join me in this process.

With that I will allow you for this particular moment to have a chance to answer any questions on any procedures that anyone could not understand what I have said. All right.

Then Mr. Mayor, if you would come forward.

Please proceed. I appreciate your coming, and as I said, this is an official hearing of the U.S. Senate and so your testimony will be made a part of the record and will be made available to the other members of my committee to read, so please proceed.

### STATEMENT OF PETER DESLAURIERS, MAYOR, CITY OF ST. ALBANS, VT

Mayor DESLAURIERS. Thank you, Senator Jeffords. Welcome to St. Albans, the Railroad City.

On behalf of the Citizens of St. Albans and the surrounding area, I extend our heartfelt gratitude to you for taking the time to come to our area and listen to our problems.

Sir, I am not a railroad man, I am an educator. I am not running for office, I was just barely elected and my political aspirations are as uncertain as an April in Vermont. I am not going to stand before you today and tell you that RailTex, a company with 23 short line railroads is indeed a railroad company. I see no need to insult your intelligence by stating the obvious. Yet RailTex seems to have no problem with our intelligence by stating the opposite. I am, however, going to stand before you here today and tell you that St. Albans needs the Central Vermont and her employees.

Mr. Flohr speaks about cutting the work force and making the company more efficient. Mr. Flohr speaks about sending the majority of the current CV employees home with partial salaries until such time as he can uproot them and send them to live and work in another community.

As Mayor and life-long resident of St. Albans, VT, I can tell you that the employees of Central Vermont, each and every one of them is a valuable asset to St. Albans and her surrounding communities. It is these employees who are upstanding community members; it is these employees who are our youth coaches and our civic leaders; it is these employees who serve in church groups and many other volunteer groups that make our community so special. It is these employees that Mr. Flohr wants to treat with a lack of dignity who are the backbone of my community.

St. Albans is at a very important crossroads. Our downtown, like downtowns everywhere is being challenged by corporate megastores that do it better and cheaper with less people. Yet unlike other communities, St. Albans is not going to wither and die. St. Albans is going to fight for its uniqueness and its small town spirit. If St. Albans is going to win this battle, she's going to need her citizens; she's going to need her citizens employed or at least with money in their pockets. She's going to need the headquarters



of the CV in St. Albans and she's going to need the tax dollars that this headquarters generates. Yet RailTex seems to want to take all of these things from St. Albans at a time when we need them the most.

Mr. Flohr in a recent conversation with me said that the headquarters of the CV would remain in St. Albans at least 1 day; after that he could make no promises. It might end up in Connecticut or Massachusetts or whenever it could be run more efficiently and cost effectively. Mr. Flohr will not make promises that he has no intention of keeping. I respect him for that. Mr. Flohr has a total disregard for St. Albans and its economic future and the welfare of her citizens, and this causes me great concern.

I realize that this is the way of big business. It is the method marketed under the trade name capitalism and free enterprise. These are among the traits that allowed our country to rise so quickly and become the greatest Nation on earth.

It is not the idea that I oppose, but the method. When used compassionately, they can be used to create growth that brings prosperity to all. Yet exploitation of the working class was not the intention of our founding fathers. Corporate greed under the title of cost efficiency is not a trait that we should allow to shape the future of our country.

Sir, you and your committee in Washington have a totally different political agenda than I do as Mayor of St. Albans. Yet, whether the problem concerns the welfare of the entire Nation or the concerns of a small community in upstate Vermont, the common thread of right and wrong, black and white exists.

RailTex's proposal is wrong. RailTex's proposal will hurt my community and her people. As Mayor I State that St. Albans needs the CV workers and their tax dollars; we need them as consumers in our downtown and surrounding areas. Our future depends on it.

As a life-long resident to the area, I can tell you that we need the CV workers in the area community. They are vital to our quality of life; they are our backbone. As an educator, I can tell you that we need the CV workers and we need their children in our school systems, because they are the children who day in and day out display a fine work ethic that was modeled for them at home.

Senator Jeffords, as Mayor of St. Albans on behalf of all of the citizens of the area, I ask you to return to Washington with the message that what RailTex is proposing to do is wrong, and that we in St. Albans, the potential victim in this scam, request their thought, their aid and their decision in favor of compassion, right and justice.

The late Pearl S. Buck once wrote: "Every great mistake has a halfway moment, a split second when it can be recalled and perhaps remedied."

Senator Jeffords, that time is now.

Senator JEFFORDS. Thank you very much for that fine statement and we will make that a part of the record. I have no questions for you.

Mayor DESLAURIERS. Do you want me to stay here?

Senator JEFFORDS. Let's see if Congressman Sanders wants to comment. You stay right there. Oh, yes, please.

Mr. SANDERS. As they say in Washington, Jim, let me submit my testimony for the record, and I will extrapolate from what I have written.

# STATEMENT OF BERNARD SANDERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. SANDERS. What is happening here in St. Albans today is a manifestation of the most serious economic problem facing this country today, and that is that all across America during the 1980s and today, decent, hard working people who are earning a living wage are being thrown out on the streets, not because they are not productive, not because the companies are not making a profit, but because of corporate takeovers and corporate greed and the fact that through these takeovers companies can make even more money. And I am excited by the response of the people of St. Albans and the fantastic effort this community has made and the unions have made and city government has made in saying that human dignity and the dreams of hundreds of people in this community are in fact going to prevail, and that corporate greed and RailTex are not going to be able to do in this community what they have done all over America.

Now the issue is not complicated. The issue is that RailTex and their lawyer friends and their monied friends have used a loophole in Federal law, which is an absolute outrage, and it is a loophole that common sense would suggest should be nullified immediately. And what this loophole is about, and it is called 10901 on the U.S. Code, it suggests that if a company that is not a railroad takes over a railroad, they do not have to respect existing labor.

And when the representatives of Canadian National or Grand Trunk and RailTex come before us this afternoon and when I sit next to you on that side, what I am going to ask them is how in God's name when you have a company that owns 23 railroads, how are they going to tell the people of America and Vermont that they are not a railroad and they do not have to obey the law. What we are talking about today is whether or not big money does what every citizen of the State of Vermont has to do and that is obey the law. And the law in this case is quite clear.

Many years ago before either you or I were in the Congress some intelligent people put legislation down which says that if a company takes over another railroad and throws workers out, those workers deserve and will have labor protection. They will not be simply thrown out on the street, and that is the law that RailTex and other companies have been attempting with success to avoid.

So the bottom line here is really an issue not of economics but of the law, and the law says that when a company, a railroad company takes over another company, the workers who are working for that railroad have certain rights and those rights must be respected by the law, and what this whole issue is about is to telling RailTex that at least in the State of Vermont they are not going to get away with what they have gotten away with around the country; you are going to obey the law.

Now it seems to me that we are making some decent success, we are moving forward. In the United States Congress, in the House of Representatives we now have 135 co-sponsors on legislature

which would abolish the 10901 loophole. I am happy to inform the people who are here in the St. Albans community that Senator Byron Dorgan has just recently introduced similar legislation in the Senate which you and Senator Leahy are co-sponsors of, which now has, as I understand it, eleven co-sponsors. And we intend to move forward vigorously to see this legislature pass.

Equally importantly, as a result of changes in the ICC composition we are now finding that the ICC is beginning to demand that railroads also obey the law. I am pleased to mention to the people here today that a very recent position announced by the ICC just last week showed that the ICC has stopped giving automatic approvals of 10901 applications no matter how flimsy.

In the Indiana High Rail case, and this is typical for the business that goes on in Washington, a railroad tried to break its unions by selling the railroad to itself under another name and in this instance, finally the ICC refused to give automatic approval, saying that because the application presented false and misleading information it was null and void.

These changes in the ICC are encouraging, but I think it is absolutely imperative that we change the law so no matter who is president, no matter who sits on the ICC, companies that buy railroads will in fact live by the law and not throw working people out on the street.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Sanders follows:]

#### PREPARED STATEMENT OF REPRESENTATIVE BERNARD SANDERS

Fellow Vermonters, I want to thank Senator Jeffords for setting up this hearing, and everyone here for coming out to express their views on this critical issue. What is going on here, with RailTex's attempt to take over the Central Vermont Railroad, is crucial to the future of Vermont—but it's also part of a nationwide trend that has been going on for many years. What RailTex is trying to do here is what it has done to communities across the country. And we're here today to say that we're not going to let it be done to Vermonters, and we're not going to let it be done any more to railroad workers and their communities across the country.

I think we all know how RailTex manipulates the laws to take over railroads and fire their workers. They use the "10901" loophole, by which they set up phony sales of short lines to supposed "non-rail entities". As many of you know, I am the sponsor of the bill to close this loophole, H.R. 3866, which now has 135 cosponsors. I'm also pleased to say that it has just been introduced in the Senate by Senator Byron Dorgan as S. 2264, with 11 cosponsors.

Our legislation is similar in its effect to provisions passed by both houses in the 101st Congress as part of the Amtrak Reauthorization, H.R. 2364. This provision was eliminated because of President Bush's veto. At that time, the House voted by an overwhelming margin to protect workers' rights in the case of rail line sales, and overrode the veto of the bill by a vote of 294 to 123. Unfortunately, the Senate fell short of overriding the veto—they got 64 votes, which was three votes short—and this provision was eliminated from the bill before it was finally passed. Now, with a new President in the White House, I believe it's time to renew our commitment to protecting the legitimate rights of workers in the rail industry, and that's why I've introduced H.R. 3866.

My bill would simply change Section 10901 of the U.S. Code so that railroad companies like RailTex cannot use it to reduce labor protection. Under this section, carriers have manipulated their corporate forms so that they can transfer work from existing, unionized carriers to newly invented, non-union short lines. Through these sham transactions, rail unions estimate that many thousands of jobs have been lost—without any accompanying protection for the displaced employees.

In the 1980s, with the compliance of the Interstate Commerce Commission, companies like RailTex began to use Section 10901 to discharge workers by setting up new dummy corporations (which, being new and thus not owning any railroads, thus qualified as "non-rail entities") and then selling their short lines to them. These



new corporations then break the labor contracts and lay off workers without any labor protection.

This has been occurring more and more, across the country. Recent cases include not only our own Central Vermont Railway, but also the Wisconsin Central in the Midwest, and other railroads in Michigan, Maine, Montana, Texas and other states. In fact, RailTex has made a specialty of setting up such dummy corporations, establishing over 20 of them. Now RailTex is the buyer chosen by the Canadian National for a new sham sale which would result in 100 employees, mostly here in Vermont, losing their jobs.

As we all know, the CV is hardly the kind of short "branchline" that Section 10901 was originally expected to deal with. It's 325 miles long, employs 180 people and runs through Vermont, New Hampshire, Massachusetts, and Connecticut. It's also worth noting, since 10901 sales are often presented as the only alternative to abandonment, that the company itself admits that the CV is a profit-making railroad. It's just not making enough profits to satisfy the Canadian National.

This community has already organized strongly to oppose the Canadian National's attempts to sell off the CV using Section 10901. In fact, when the original plan to sell the CV to a sham "ESOP" owned by the CV's managers was announced, the people of St. Albans collected over 15,000 signatures on petitions opposing the sale. As a result of this opposition, the Canadian National decided not to go ahead with its ESOP idea. Unfortunately, as we have seen, the alternative they chose is even worse.

The company they have now announced that they will be selling to, RailTex, is a company which owns 23 railroads yet claims not to be a rail company. What RailTex proposes for the Central Vermont is consistent with how they have operated in the past. They are proposing to fire all 175 workers, rehire just 78 of them and in the process, break the existing unions.

This is totally unacceptable to me and to the people of Vermont. Vermont workers are not garbage that can be tossed out on the street whenever the company feels like it. Many of the CV workers have been employed on the railroad for very long periods of time, and no company has the right to treat them like this.

Railtex's attempt to buy the CV using Section 10901 is a repetition of what they did repeatedly during the 1980s, and the ICC let them get away with it. However, the tide may now be turning, and the ICC's recent decision in the Wisconsin Central case, may signal a change in this respect. The ICC's decision in that case, which was upheld by the Court of Appeals for the Seventh Circuit on January 27th of this year, marked a clear departure from its laissez-faire approach of the 1980s. A majority of the ICC Commissioners found that the legal sleight-of-hand was so obvious as to be embarrassing, and refused to approve a 10901 sale without labor protection.

RailTex has consistently claimed something that is obviously false and completely contradictory to common sense—that a company that owns 23 railroads is not a railroad company. And the ICC, following the ideology of Reaganomics, has in most cases said that common sense doesn't matter, and automatically approved the sales—leaving railroad workers out in the cold.

I'm pleased to note that another decision announced by the ICC just last week, on June 28th, showed that the ICC has stopped giving automatic approvals of 10901 applications, no matter how flimsy. In the Indiana Hi-Rail case, in which a railroad tried to break its unions by selling the railroad to itself under another name, the ICC refused to give automatic approval, saying that because the application presented false and misleading information, it was null and void.

These changes in the ICC are encouraging. But I think that it is important that the Congress act also, to make it clear once and for all that the kinds of fake sales that RailTex has made its business are not what was intended in deregulating the rail industry, and are a practice that has to stop. That, in a nutshell, is the reason for my bill. It's quite simple: it changes the rules governing railroad sales so that transactions under Section 10901 no longer allow rail companies to escape their responsibilities to their workers.

My friends, for far too long we have allowed rail companies to manipulate the law for their own greedy purposes. For railroad workers, their families, and their communities, it's time to stop RailTex and its phony railroad sales once and for all.

Senator JEFFORDS. Thank you, Congressman Sanders and Mayor, I appreciate your testimony and that's all. Thank you very much.  
Mayor DESLAURIERS. Thank you.

Senator JEFFORDS. The next witness will be the General Counsel of the ICC. Before I do that, I will make a brief statement and I would also recognize that we have before us Glen Mechanic rep-

resenting the governor who will place his name—is Glen here? I guess not. He was able to take the Governor's statement.

Ed Pigano is here and if you will stand we will recognize you and Senator Leahy's statement will be made a part of the record, and thank you very much for coming.

[The prepared statement of Senator Leahy follows:]

#### PREPARED STATEMENT OF SENATOR LEAHY

I am pleased to submit testimony at this field hearing on labor implications of railroad sales. I commend Senator Jeffords for calling this hearing.

Today, we are at a critical crossing in the future of railroads in America. On one track, railroad companies are selling pieces of their lines to slash labor costs and boost profits. On the other track, railroad workers are fighting these sales to preserve quality jobs and maintain good working conditions. These two tracks are crossing right here in St. Albans at the Central Vermont Railway (CV).

Under its proposed sale to RailTex, Inc., the CV would join hundreds of other railroads that have become extinct because of the short line railroad sale phenomenon. I will continue to work hard to protect the CV's 178 workers from becoming the latest victims of a short line sale.

More and more railroad companies are selling off small chunks of their lines to form regional railroads, or short line railroads. Short line railroads now account for 24 percent of U.S. railroad trackage, up from six percent only two decades ago. From 1950 to 1980, 75 new short line railroads were formed. From 1980 to 1988, 190 new short line railroads, almost 24 per year, were formed. That's about 10 times faster than the historical average.

Why this explosion in short line railroad sales? It's simple. Short line railroad sales have become a corporate tool to boost profits at the expense of railroad workers. Large railroads can escape current labor agreements on wages, unilaterally change work rules and avoid paying mandatory severance benefits by selling a line to a new corporation. The large railroads then enter into long-term freight contracts with the new short line corporation. Thus, the new short line railroad can run the same trains carrying the same goods on the same tracks, but at much cheaper rates.

The Interstate Commerce Commission (ICC), the federal agency that regulates railroads, has approved hundreds of these short line railroad sales. While approving these sales, the ICC documented that short line sales are driven by cutting labor costs. Former ICC Commissioner Paul Lamboley found that: "Short line sales and other line transfers have become nothing more than sham transactions structured to rid existing carriers of the labor costs associated with certain lines, while preserving for themselves or affiliated entities the benefits of the traffic associated with those lines." In fact, the ICC uncovered a short line agreement in one case where the deal was explicitly contingent on the new railroad remaining non-union.

Once approved by the ICC, short line railroads pay reduced wages and employ fewer employees. The Wall Street Journal reported that short line railroad workers earn up to 40 percent less than other railroad workers. In 1988, major railroads employed an average of 1.6 workers per mile of track while short line railroads employed .44 workers per mile. In other words, short line railroads employed far fewer worker for far less pay than major railroads.

The proposed sale of the CV fits this mold. If the ICC approves of the sale, RailTex plans to form a corporate subsidiary to take control of the CV's assets and then fire all the CV's 178 employees. RailTex's new paper corporation would hire 70 to 80 new employees, possibly among them some of the workers it had just fired. Employees of RailTex's new paper corporation would be forced to accept limited or no union representation, wage cuts, new pension plans and changed work rules without any say.

In addition to non-union workers and lower wages, rail companies are given another incentive to short line railroads. Under section 10901 of the Interstate Commerce Act, the ICC may—but is not required to—impose severance benefits for workers who lose their jobs because of the sale of a short line railroad. These severance benefits, called labor protection benefits, are available for up to six years to an unemployed worker. Section 10901 was designed to be available for the sale of small railroads only. In other railroad sales, and when a railroad is abandoned, Congress required the ICC to award labor protection benefits to all employees displaced by the sale or abandonment.

Since 1982, the ICC has refused to impose labor protection benefits in any railroad sale under section 10901. In fact, the ICC issued regulations in 1985 that exempt short line sales from virtually any review. Under these regulations, the ICC

has made this section available to all "non-rail carrier" buyers—companies that did not provide rail transportation until after the ICC approved their purchase of a railroad. The regulations require the ICC to automatically approve section 10901 sales after seven days.

Under this Alice in Wonderland backward procedure, the ICC may—but is not required to—review a short line railroad sale after the agency has already approved it and the sale has occurred. The ICC has ruled that when it reviews a section 10901 approval, it may award labor protection benefits only if it finds "exceptional circumstances." You may ask what are these circumstances? Who knows? The ICC has never found "exceptional circumstances" in the hundreds of railroad sales under this law.

The railroad industry knows that the ICC has never imposed labor protection benefits under this law, and many have exploited this hands off approach. The proposed sale of the CV is a perfect example of this exploitation.

To fit through this loophole and breeze by the ICC, RailTex intends to form a new corporate subsidiary to buy the CV. Although RailTex operates 23 regional railroads and its stock is publicly traded as a rail company, its new paper corporation would claim to be a "non-rail carrier" under the law. RailTex plans to claim "non-rail carrier" status while it negotiates with the CV's corporate parent over long-term agreements on prices, scheduling, marketing, and other critical factors governing the future operation of the railroad.

Rep. Sanders, Sen. Jeffords and I have introduced legislation in Congress to close the loophole in the law. Under our legislation, railroad workers displaced by a short line sale would be eligible to receive labor protection benefits while they make the transition to other work. I believe this legislation will remove the current incentive to short line railroads.

For reducing labor costs and increasing profits, it's a no brainer—short line railroads are cheaper. But for railroad workers and the future of America railroads, short lining is just short sighted. The lure of quick profits is no substitute for finding long-term solutions to running a profitable and competitive railroad while treating workers fairly.

Like all businesses, the railroad industry is changing. Working together, workers and management can meet the challenges facing the changing railroad industry instead of fighting over short-sighted railroad sales. The real solution to the phenomenon of short line railroad sales must be worked out between railroad labor and management.

Railroad management's need to make a profit and railroad labor's right to earn a fair wage need not be two separate tracks that inevitable lead to a short line railroad sale. The two tracks can merge together to form a stronger railroad that will endure for years to come. Let's work together to make the CV the shining example of a strong, long-term railroad that makes a profit and treats its workers fairly.

Senator JEFFORDS. For the past decade or more the railroad industry, like many other American industries, has undergone a substantial amount of downsizing, consolidation and change, and I am trying to give you some background information because although to some this issue is one where there is a clearcut answer, I think you will find that an examination of the recent past as well as the complications of the law make it not quite as easy to come to a determination as to what is best for the community.

As all of you know, there is a pending sale of the CV subsidiary to the RailTex Service Company. The sale involves a substantial reduction in the number of jobs on the CV, from 178 to 78 jobs, and has caused a great deal of concern, obviously, in the community. I hate to see jobs lost and I hate to see railroads lost. As someone who watched the Rutland Railway dismantled I do not want to see another similar chain of events here in this community.

The purpose of today's hearing is to gather the information necessary to build a common understanding of the situation facing the CV and its workers. I want to examine all the available options, what they mean and how we might meet our common goals.

I believe these goals are three-fold: First, we want to keep the railroad going; second, we want to help as many people, keep as



many people on the job as is reasonably possible; and third, recognizing that some job loss is probably inevitable, we want to give as much help to those who do lose their jobs as is reasonably possible.

Because there has been a great deal of misinformation and misunderstanding on these issues and their implications, we have assembled a group of witnesses for you today who could speak authoritatively, not only about the CV sale, but also about the procedures to be followed by the Interstate Commerce Commission in evaluating the proposed sale, and the recent history of short line rail sales across the country.

I look forward to the testimony and that is why I have asked the General Counsel of the ICC to be with us today, so he may fill us in on information regarding the sales of this nature. I would point out that he is here as a legal counsel, he has no authority to set policy, but he can tell us and answer factual questions, and so with that, would you please come forward?

Mr. RUSH. Thank you, Congressman Sanders. I too will submit a statement for the record. There has been a change or two in the testimony that was presented to you and rather than outline that, I will just give you my copy for the record if I may.

#### **STATEMENT OF HENRI F. RUSH, GENERAL COUNSEL, INTERSTATE COMMERCE COMMISSION**

Mr. RUSH. Chairman Jeffords, Congressman Sanders, thank you for the invitation to testify here today. As you requested, I will discuss the Commission's role in the oversight of rail transactions such as the present one.

As is so frequently the case it seems recently, the Commission's role may not have been fully appreciated, and accordingly, it's quite fitting that we should discuss what the Commission can and will and may do in the circumstances of a proceeding such as this.

I can assure you that the Commission will play a meaningful role and pass upon this transaction regardless of what section of the statute it is processed under or whether it is treated as an exemption or not. I presume it will be filed as an exemption from approval under 10901, but since all we know is what we read in the newspaper, I cannot tell you whether that will be followed or not.

The Commission procedures for handling requests for exemption from 10901 differ, depending upon the size of the railroad. In Class III railroads, the procedures are simpler and the time frames are much shorter. In general, such applications take effect within 7 days unless stayed by the Commission, but they are subject to revocation by the Commission where such revocation seems appropriate.

Transactions involving larger carriers, so-called Class I or Class II carriers are processed on a 35-day schedule, requiring additional information and service upon shippers and representatives of employees. The dividing line between Class II and Class III carriers is \$21 million dollars in revenues.

Central Vermont when last it reported to the ICC was classified as a Class II carrier; that was in 1978 when the threshold was lower. The last year that CV reported in 1980 it reported revenues of \$20,833,000. It also lists itself as a Class II carrier in Moody's

Transportation Manual and is carried as such in the Grand Trunk Corporation's 1991 annual report.

I focus on this because of the difference between the treatment of a Class II and a Class III carrier requesting an exemption.

Also it should be noted the regulations speak in terms of the carrier to be created, so that if in doubt and the revenue is on the margin, it might well be that it would be best treated as a Class II carrier. In any event, if the application is processed there is a request for exemption by a Class II carrier, the notice of intent to file a notice of exemption must be served at least 14 days before the notice of exemption is filed with the Commission.

The notice of intent must be served on states, the national offices of the labor unions and on shippers representing at least half of the preceding year's traffic. The exemption is processed by the Commission's Office of Proceedings. The director of that office's number is Area Code 202—927-7513.

Perhaps more significantly there is an automatic status number which people can call to check on the status of any case filed and that is Area Code 202—927-7600. The Commission will publish those notices of exemption in the Federal Register once it is filed and assign a docket number to it.

Although a petition to revoke the exemption may be filed at any time, a request to stay the exemption must be filed within 7 days of the filing of the notice of exemption.

And as an aside, let me say I am going to exceed my time.

Senator JEFFORDS. We will waive the time limit if you do.

Mr. RUSH. It is so important to file at the stay level so that nothing takes place and you do not have an unscrambling the egg situation. So I would urge people to focus on that 7 days which comes 14 days after service, so there is 21 days to prepare the case. Petitions and comments should be sent to the Secretary of the Interstate Commerce Commission in Washington, DC., Zip Code 20423, and it should be refer to the assigned docket number. The Central Vermont Railway should be served with a copy of any filing and the filing should indicate that such service was made.

For assistant in drafting submissions to the Commission, one may contact Nancy Beiter, that is B-e-i-t-e-r, on the subject of public assistance at Area Code 202-927-7597.

I'd like to touch briefly on the significant issues that arise in cases such as this. Everyone here I am sure is aware that the major element in past line sale basis has been the absence of labor petitions for affected employees, protection that would be required if the matter was treated under Section 11343. I cannot emphasize too strongly the fact that the Commission has not chosen to exercise its discretion to provide labor protection in the past does not mean that imposition of a reasonable labor and labor protection may not be forthcoming in the future.

I would urge the parties seeking protection not only to justify imposition of some protection but perhaps also to undertake to suggest an appropriate level of protection other than New York Dock, because New York Dock protection as things now stand is not applicable to 10901 transactions. I am well aware that Congressman Sanders would change that in HR 3866, and I am not prepared to

comment on that, but the fact is that as things now stand that is not covered.

Also as I will indicate, labor protection even under New York Dock focuses on the seller, not the purchaser, and hence may not be entirely satisfactorily in cases such as this. So that in turning attention to the second major issue, the issue of attempting to demonstrate that this is a 11343 transaction or that New York Dock protections should be imposed, be aware that such imposition largely impacts the seller, which in cases where the seller no longer exists is not particularly satisfactory.

In this situation it is not clear what the exact status of GTC is and CN North America. Perhaps that will be gotten into at this hearing. Surely it will be made of record and insisted upon in connection with any matter before the Commission.

Senator JEFFORDS. I am sorry, would you repeat that?

Mr. RUSH. I said surely the interrelationship between the Grand Trunk Corporation, CN North America and Central Vermont will be a matter that the Commission will want to know about. And as I say, it may well come up in this hearing today but that is a potentially very significant issue.

Finally there is the question of whether the transaction should be proposed as an exemption from 10901 or as an approval under 10901. An approval requires a great deal more information to be submitted and further consideration is given by the Commission.

In addressing the issue of revocation of an exemption if it has already become effective, while urging that it be treated as an approval under 10901 if it does not become effective, it is necessary to show full-blown consideration under 10901 is necessary to carry out the transportation policy of the Interstate Commerce Act.

The Interstate Commerce Act declares it to be the policy of the United States to seek to achieve a number of transportation goals, including, it's most relevant here, maintenance of a safe, sound and efficient rail transportation system with sound economic conditions, effective competition, reasonable rates and encouraging fair wages and safe and suitable working conditions. If protesting parties can demonstrate the use of 10901 exemption prevents the Commission from carrying out these policies, then consideration under 10901 as opposed to an exemption from 10901 would be appropriate.

Whether the Commission addresses proposed transaction under Section 11343, 10901, or one of the exemption procedures provided by its rules, I want to assure you and all of the people in this room who are properly concerned about their status that the Commission will give full and careful consideration to all of the arguments advanced and if need be will attempt to accommodate all of the competing and sometimes conflicting interests to the maximum extent possible.

I say "if need be" because there is no doubt in my mind by far and away the best solution to all the matters that I have discussed is for the parties to agree among themselves how they should be resolved. I can remember when in a transaction such as this one, labor protection was agreed to among the parties and simply adopted as a condition by the Commission. I would hope for the sake of everyone involved in these transactions that this would be the case here.

Thank you for permitting me to exceed my time.  
[The prepared statement of Mr. Rush follows:]

#### PREPARED STATEMENT OF HENRI F. RUSH

Chairman Jeffords, Senator Leahy, Congressman Sanders and members of the subcommittee, thank you for the invitation to testify today. As you requested, I intend to discuss the Commission's role in the oversight of rail transactions such as the sale of the Central Vermont Railway. As in so many other areas, the extent of that role may not be fully appreciated. Even if approval for the transaction is sought, as I presume it will be by way of an exemption from Section 10901 of the Interstate Commerce Act, the Commission has, and you may rest assured will undertake to play, a meaningful role in ensuring that the transition from one owner to another is as smooth and painless as possible.

The Commission's procedures for handling requests for exemption differ depending upon the size of the railroad involved. For Class III railroads the procedure is simpler and the timeframes are shorter. In general such applications take effect within seven days unless stayed by the Commission but are subject to subsequent revocation by the Commission where appropriate.

Transactions involving larger carriers, so-called Class I and II carriers, are processed on a 35-day schedule requiring additional information and service upon shippers and the representatives of employees.

The dividing line between Class II and Class III carriers is \$21 million in revenues. Central Vermont was classified by the Commission as a Class II carrier in 1978 when the threshold for Class II carriers was much lower. The last year CV reported revenues to the Commission was 1980 at which time it reported revenues of \$20,833,000. It is also listed in Moody's Transportation Manual for 1993 as a Class II carrier.

If the application is processed as a request for exemption by a Class II carrier, a notice of intent to file a notice of exemption must be served at least 14 days before the notice of exemption is filed with the Commission. The notice of intent to file must be served on States, the national offices of the labor unions, and on shippers representing at least half of the preceding year's traffic. The exemption will become effective 21 days after the notice of exemption is filed unless stayed by the Commission. The exemption is processed in the Commission's Office of Proceedings. The Director's office number is (202) 927-7513, and the automated Case Status number is (202) 927-7600. The Commission will publish notice of the exemption in the Federal Register. Although a petition to revoke the exemption may be filed at any time, a petition to stay the exemption must be filed within 7 days of the filing of the notice of exemption.

Petitions and comments should be sent to "Secretary, Interstate Commerce Commission, Washington, D.C. 20423." The Central Vermont Railway should be served with a copy of your filing and the filing should indicate that such service was made. If you want assistance in drafting your submission to the Commission, you can call Nancy Beiter of our Section of Public Assistance, (202) 927-7597.

I will touch on three substantive areas that usually arise in this type of case. You are probably aware that a significant element of past line sales under Section 10901 has been the absence of labor protection for affected employees, protection that would be required if the transaction were governed by other provisions, such as the provision relating to carrier-to-carrier transfers, 49 U.S.C. 11343. The fact that the Commission has not chosen to exercise its discretion to impose labor protection in Section 10901 cases does not mean that the imposition of a reasonable level of protection in future cases is foreclosed. Parties seeking protection should justify its imposition and may wish to suggest some appropriate level of protection other than New York dock, since the 1New York Dock protection by its terms is not applicable to Section 10901 transactions.

Another issue that is often raised in Section 10901 revocation proceedings is whether the transaction is properly under that provision, particularly whether the buyer is really a non-carrier (or not a railroad). If the buyer is owned by, or affiliated with, a railroad or the owner of another railroad, the buyer must be "independent" of its owner to qualify for Section 10901 treatment. The courts and the Commission have ruled in a number of cases on the appropriate standards of independence.

After a period of some leniency in interpreting the independence test, the Commission has recently adopted, in the Wisconsin Central case, a more rigorous standard of independence. This requires a greater showing of independence to warrant the use of Section 10901, and to avoid the mandatory labor protection of Section



11343. Labor protection in transactions under 11343 is largely imposed upon the seller, which in cases where the seller ceases to exist is not particularly satisfactory.

Finally, there is the question of whether the transaction should be processed as an exemption from or a request for approval under Section 10901. As I indicated at the outset, I assume authorization for the transaction will be sought as an exemption from 10901. In seeking revocation of an exemption (if the authorization has already become effective) or to demonstrate that the transaction should not be processed as an exemption, it is necessary to show that full blown consideration under 10901 is necessary to carry out the transportation policy [of the Interstate Commerce Act]. The ICA declares it to be the policy of the United States to seek to achieve a number of transportation goals, including maintenance of a safe, sound and efficient rail transportation system, with sound economic conditions, effective competition, reasonable rates, and encouraging fair wages and safe and suitable working conditions. If protesting parties can demonstrate that use of the Section 10901 exemption undermines the Commission's ability to carry out these policies, then consideration under 10901 as opposed to exemption would be appropriate.

Whether the Commission addresses the proposed transaction under 11343, 1091, or one of the exemption procedures provided by its rules, I want to assure you that the Commission will give full and careful consideration to all of the arguments advanced, and, if need be, will attempt to accommodate all of the competing and sometimes conflicting interests to the maximum extent possible. I say if need be because there is no doubt in my mind that by far and away the best solution to all of the matters I have discussed is for the parties to agree among themselves how they should be resolved. I can remember when in transactions such as this one labor protection was agreed to among the parties and simply adopted as a condition by the Commission. I would hope for the sake of every body involved in or affected by this proposed transaction that this will be the case here.

Senator JEFFORDS. That is quite all right. I hope I will not exceed too much time myself, but I have a number of questions that I would like to ask you to clarify in my own mind and hopefully for those that are here as well as the Committee what some of your testimony meant.

On page 3 of your testimony you talk about past line sales and you use this, it says protection would be required if transaction were governed by another provision.

What other provision are you referring to?

Mr. RUSH. 11343. This is the 10901, 11343.

Senator JEFFORDS. Right. It just refers to that.

Later on on that same paragraph you mentioned and you reemphasized the fact that you haven't done this as a matter of course of getting into the protection of labor laws or protections of the rights of the workers as a matter of course. You indicated that parties seeking protection could justify this.

Who would "parties" be representing workers?

Mr. RUSH. Well, any individual employees or representatives of the employees, whether they be labor officials or just individuals. The Commission will hear from anybody.

Senator JEFFORDS. So they could all be parties in that sense?

Mr. RUSH. Yes, sir. I did not mean to use parties in the highly technical sense, but anyone who wants to makes a presentation, we have to take it into account.

Senator JEFFORDS. I wanted to clear that up for the record.

Now another question I have is New York Dock, I am a little confused as to what discretion you have under New York Dock. As you know, the one that is always cited is the six-year severance pay.

Mr. RUSH. That's correct.

Senator JEFFORDS. And I get confused reading the document here as to whether or not that is the rule as far as what happens to an employee who is severed or that is the maximum.

Mr. RUSH. It's not the maximum, and I hate to give a lawyerly sounding answer, but I have to. It is the minimum in the sense that the New York Dock conditions where approved by the United States Court of Appeals for the Second Circuit as meeting the minimum requirements set out in 11347 of the statute. I would think any modifications would have to be as favorable, although there might be changes within the terms themselves. As you know there are a package of protections, and it might be that that could be made more favorable and if that were done, another could be modified so it was not quite as favorable.

Senator JEFFORDS. I think this is important to understand. To be comparable, it would have to be somewhat equal in economic value of some sort?

Mr. RUSH. That's correct.

Senator JEFFORDS. Now if you are earning \$40,000 a year, what would a six-year severance pay mean?

Mr. RUSH. Well that depends on your other employment which is an offset, if you obtain other employment that is offset against the amount that you are paid by the railroad, reasonably so.

Senator JEFFORDS. Otherwise, you'd be entitled to \$240,000?

Mr. RUSH. Depending on how long you worked for the railroad. It is year for year for the time you worked for the railroad, so someone who only worked for them 6 months, if there be any such person, would get 6 months.

Senator JEFFORDS. So if you worked 6 years or more you would be entitled to that?

Mr. RUSH. That's correct.

Senator JEFFORDS. Thank you.

In your testimony on page four, you made this statement: "Labor protection and transactions under 11343 is largely imposed upon the seller."

What do you mean by that? That is just from the history of looking at it or what determines as to who takes the burden of the severance pay or whatever?

Mr. RUSH. Well the Commission interpreted the New York Dock conditions for line sales as between railroads in a proceeding called Wilmington Terminal Railroad, and in that case it held that the protection, the dollar payments, if you will, displacement allowances and the like must be born by the seller; that the purchaser's obligation is to advise what positions are available and give a right of first refusal to the employees desiring to take those positions. And also announce what the principles of selection will be.

Senator JEFFORDS. And when those positions are filled, then those employees that are not taken on would be entitled to the severance?

Mr. RUSH. From the seller, provided the seller is continuing the business. And now you are leading into the issue of what happens, what is the relationship between CV and its corporate parents because they may well argue that CV no longer exists, so there is no one upon whom to impose these burdens.

Senator JEFFORDS. Now if CV however has assets other than sale assets, could that be taken into consideration in making that determination? I am trying to get out of you making any policy deci-



sions. Would that be taken into consideration in determining as to who should be required to take the burden of the settlement?

Mr. RUSH. All I can tell you is what the law is and that gets me out of any policy development as it is developed to date. The law is that there is an equitable balance which involves the question of any sort of windfall profits to particularly a selling parent, so as to make it just they would share the benefit of that with the employees who have been dispossessed.

Senator JEFFORDS. And again, it would depend also upon what the relationship of the Grand Trunk is to that which is the owner, the totally owning corporation of the subsidiary which I assume—can the Commission take that into consideration rather than just something that is totally going out of business?

Mr. RUSH. Yes, it can and has on some occasions.

Senator JEFFORDS. This is another, I think, important question. Would it be appropriate to come to the conclusion that the more beneficial the particular sales contract was to the seller, the better likelihood of getting a help to severance pay and other conditions of the sale?

Mr. RUSH. Well in the more recent cases and those are probably 10 years old, the Commission has looked at and said there was no unusual benefit to the seller. The implication of that was that had there been, that the situation would be different.

Senator JEFFORDS. What does that mean?

Mr. RUSH. Well, if inferring a negative, the Commission in declining to impose labor protection to the seller realized no unusual benefit in connection with the sale. And what I am suggesting to you as a lawyer, I would read that to say if the seller had enjoyed an unusual benefit, it might well be appropriate to impose labor protection. We are getting into matters that, you know, I cannot really speak to.

Senator JEFFORDS. I understand. I am probably pushing it too far, but I am going to keep trying anyway.

In other words, what I am suggesting is that if there were other sales which could have been made which were less profitable, that certainly would be less likely to be utilized as providing protection for the workers; is that correct?

Mr. RUSH. I am not sure that I understand your question.

Senator JEFFORDS. I am not sure that I do either.

Mr. RUSH. These are all matters that will be fully explicated when the time comes.

Senator JEFFORDS. I guess that's the bottom line question; all these matters will be carefully considered by the ICC?

Mr. RUSH. Yes, sir. I can assure you of that.

Senator JEFFORDS. When you read the exemption and that the general rule under these cases is to grant exemption, that scares you because it would appear that if you are exempt, you are exempt. But that term exemption, as you explained it, does not mean that you are out from under the purview or the pressure of the ICC; you come up with a reasonable arrangement for the workers; is that correct?

Mr. RUSH. That's correct. If the exemption is repealed or revoked and that was what Congressman Sanders was referring to was done fairly recently to look at the transaction.

I think the important point is that if the 7 days or the 21 days has gone by you are not out of the ballgame. You can bring facts to the Commission which they will consider in connection with revocation of exemption.

Senator JEFFORDS. The Fox Valley Case, I want to get into that, I get a little confused by that, figuring out exactly what happened in that case with respect to the kind of mixing 10901 and 11343.

What exactly did the Commission do and what does it mean in terms of the proceedings that we are now in as to the authority of the Commission to get involved in labor protection?

Mr. RUSH. Well ultimately the Commission proceeded with the transaction under 11343. One of the commissioners no longer there in dissent said that we had thrown out all our jurisprudence of the past 12 years. Another one who is still there said no, this really is a unique case and it does not change the facts all that much.

Now Chairman McDonald made a separate statement wherein she indicated that she would have ruled that it was 11343 not only on the ground on which it was decided, but on the additional ground that it was a classic consolidation going on. In that respect it may be a bit unique because it is not the sale of a railroad as such; it involved an intended consolidation, an avowed consolidation. Commissioner Simmons said nothing, so I do not know what he was thinking about in Fox Valley.

Senator JEFFORDS. Now I see why I was a little confused.

Mr. RUSH. Yes, sir. There were at least three different views of what the case stood for. But I think that Chairman McDonald and Commissioner Simmons and we now have a Linda Morgan from the Senate Commerce Committee staff, I should think it is fair to look at Fox Valley as the new approach in this sort of transaction, and while it may not fit exactly the facts of this situation, it certainly represents a willingness to look beyond the form that is presented, and that I think is something.

Senator JEFFORDS. That is what I find interesting and hopeful in this situation.

Congressman Sanders.

Mr. SANDERS. Thank you, Senator. Could you inform the audience again the implications of Fox Valley? What made it different from what had gone on during the 1980s?

Mr. RUSH. Well, it was stated to be a consolidation of three different railroads. And that was a different statement that had been made, but I think it is perhaps putting too much emphasis on that to say that is all it stands for.

Mr. SANDERS. What did it mean for workers?

Mr. RUSH. Well, it was handled under 11343, not 10901 which meant that the New York Dock labor protective conditions were imposed.

Mr. SANDERS. Which meant that the ICC has said after many, many years that the law that was on the books should be enforced and not be exempted through the 10901; is that a fair statement?

Mr. RUSH. Well, sir, we imposed the law as we understood it in that case, and that was that 11343 was the appropriate method for that.

Mr. SANDERS. What was the date of that decision?

Mr. RUSH. It was about 2 years ago. I have it here. I have a copy I can loan to him.

Mr. SANDERS. Thank you.

Senator JEFFORDS. Anything further?

Mr. SANDERS. I would like to ask him something. Just a few questions, Mr. Rush. Thank God for many things, and one of them is that I am not a lawyer.

How long have you been with the ICC?

Mr. RUSH. Almost 20 years.

Mr. SANDERS. You were there throughout the 1980s?

Mr. RUSH. I joined them in August of 1985.

Mr. SANDERS. On page—the very bottom of page 3 you write: “After a period of some leniency in interpreting the independence test, the Commission has recently adopted in a Wisconsin case a more rigorous standard of independence.”

Can you please explain to the people of St. Albans what a quote, unquote period of some leniency means, when the leniency came into effect?

Mr. RUSH. In the early 1980s everything was——

Mr. SANDERS. Did anything happen in the country in the early 1980s that might be of relevance to that decision?

Mr. RUSH. I understand there was an election.

Mr. SANDERS. We think there was an election. And who appoints the members of the ICC?

Mr. RUSH. The President with the advice and consent of the Senate.

Mr. SANDERS. Can you elaborate a little bit of some—after a period of some leniency in interpreting the independence test, what does that mean in plain English? What did it mean? How much cases, roughly speaking, how much transactions were approved under 10901 and how many were rejected?

Mr. RUSH. Well, none were rejected.

Mr. SANDERS. None were rejected? Every single transaction that came before the ICC, none were rejected? Is that what you are telling me?

Mr. RUSH. That is what I am telling you.

Mr. SANDERS. That sounds——

Mr. RUSH [continuing]. like a period of some leniency.

Mr. SANDERS. Let me ask you another question. Maybe we would better understand how Washington works and what really happens in the Congress.

Mr. Rush, do you know a women named Heather Gradison?

Mr. RUSH. Yes, sir; I do.

Mr. SANDERS. Heather Gradison to the best of my knowledge is today, and we will ask Mr. Flohr to confirm this, but my best understanding is that Heather Gradison is a member of the Board of Directors of RailTex, the company we are dealing with today. Do you happen to know if that is true?

Mr. RUSH. I do not know if that is true. That is news to me.

Mr. SANDERS. My understanding, and we will confirm this in a moment, maybe I am wrong, I do not think I am——

Senator JEFFORDS. Why do not you wait until——

Mr. SANDERS. Well, let me just—I would like an opinion from Mr. Rush on this.

How do you happen to know Mrs. Gradison?

Mr. RUSH. She was Chairman of the Interstate Commerce Commission.

Mr. SANDERS. Oh, my goodness, let me see if I understand. Maybe you can give us some legal opinions here. My understanding, you can please confirm if I am right or wrong, that Mrs. Gradison was on the Interstate Commerce Commission from 1982 through 1990, was chairperson from 1985 to 1990. Does that sound correct?

Mr. RUSH. It sounds correct to me.

Mr. SANDERS. My understanding is that immediately after leaving the chairpersonship of the ICC she suddenly became a member of the RailTex Corporation.

Do you think, Mr. Rush, that this might explain a little bit about the leniency in interpreting the independence during the period of the 1980s?

Mr. RUSH. Well, she certainly had a liberal view.

Mr. SANDERS. A liberal view?

Could you please describe what you mean by "a liberal view"? Does that mean granting every single transaction that came before 1901, that is liberal? Is that what you are saying?

Mr. RUSH. It would be fair to say.

Mr. SANDERS. Throwing hundreds of workers out without recourse was liberal. Is that your interpretation?

Mr. RUSH. It would be fair to say she never saw a 1901 transaction she did not like, but I think it would also be fair to say that at the beginning many of these lines were lines that were in deep trouble and would have been abandoned or had in fact been filed for abandonment, and that permitting them to proceed without labor protection at least arguably was very much in the public interest.

Mr. SANDERS. Just one more question because I want it quite clear. Did I hear you say that you thought that RailTex or Central Vermont might argue that if the sale is transacted, CV is no longer a carrier and therefore not responsible for labor protection?

Mr. RUSH. Well, the theory of labor protection, imposing it on the seller is that they can use the employees in their other operations. And to the extent that CV has no other operations, there is nowhere the employees can work.

Mr. SANDERS. And is this the kind of common sense that the ICC listens to? Because somebody—what is the relation? Common sense, most of us are under the opinion, at least we have been led to believe that Canadian National and Grand Trunk own the CV. Most of us had been led to believe that no matter what happens with the CV, this particular transaction, Canadian and Grand Trunk are still here.

Mr. RUSH. I assume they will be, and the question of whether employee protection should be imposed on—it would have to be a U.S. subsidiary for reasons that I am sure you can understand. Whether that protection should be imposed will be a key issue before the Commission and one on which it would be inappropriate for me to express any opinion.

Mr. SANDERS. Thank you very much.

Senator JEFFORDS. Thank you, Mr. Rush.



We will now take a 5-minute break and those that want to testify who have not signed up, the sheet is there and please, we will close up the signing up on that sheet after the break. There are refreshments available somewhere—

[Recess.]

Senator Jeffords. I note that we have three members of the Vermont legislature here if they would like to be recognized. I know we have Sam Munson here, Sam and Leon Graves and Peter Martin. Show your hands. Still here? OK. All right. I appreciate your coming.

Our next panel is Mr. Concannon, an employee I believe, of CV; Ed Garvey, President of Labor Strategies, Inc., and Larry Thornton, General Chairman, Brotherhood of Railway Carmen. Nice to have you here. We will listen to your testimony and then we will ask questions after you have all testified.

Mr. Garvey, first, would you explain what your organization is and who you represent?

Mr. GARVEY. Yes. Senator, we are delighted to say that even there are a number of unions on the Central Vermont, all of them have agreed to act as one, and so throughout the past year all of the unions have worked together. I was initially hired by the United Transportation Union to come here and work with the employees, so I have been representing them in Congress as well as in terms of talking to Members of Congress as well as trying to organize the strategy to deal with the situation.

Senator JEFFORDS. Now you represent all the unions that have acting members in the CV?

Mr. GARVEY. Yes, I do. I am hired by the United Transportation Union but all have agreed we should have one group.

Senator JEFFORDS. Why do not you proceed first, then we will go to Mr. Thornton and then Mr. Concannon.

**STATEMENTS OF ED GARVEY, PRESIDENT, LABOR STRATEGIES, INC.; LARRY THORNTON, GENERAL CHAIRMAN, BROTHERHOOD OF RAILWAY CARMEN; AND JAMES CONCANNON, DISTRICT CHAIRMAN, TRANSPORTATION COMMUNICATIONS UNION, LOCAL 717**

Mr. GARVEY. Thank you, Senator. We are delighted that the entire Vermont delegation is indeed on board with respect to closing of this loophole. It's very encouraging. After listening to the most recent testimony, however, I guess came here as a liberal and I leave as a conservative or a radical or something else if this is a liberal interpretation of the Interstate Commerce Commission.

I should mention that I represented the unions in the Fox Valley case that you raised and quite honestly, it is very similar to this. Stripped of all of the bureaucratic discussion, it is very simply an effort by the carriers to get out from under the law that says that employees will be treated as valuable assets and will be protected when a sale occurs between a rail company county and a rail company.

All of the railroads have to live by that law. But under Heather Gradison, the former chair of the ICC, now a member of the Board of Directors of RailTex who is under investigation of the Inspector General of that agency and found to have been so tied in with the

carriers that they in fact found that she had violated the cannon of conduct of the Interstate Commerce Commission, what they allowed was for companies to set up dummy corporations, corporations with no assets and no history; they just create something new. They walk over to the Secretary of State's office, file it and call it NewCo Central Vermont or in the case of Fox Valley, the Fox Valley Western.

Now imagine if you will if you were creating a new corporation and you wanted to buy the Central Vermont for \$30 million or \$40 million and you walk into your friendly bank and say, Hello, I am Congressman Sanders and I have a new company and I want to buy this railroad. Would you loan me \$40 million? They will say, Nice to meet you, Senator. Please leave. Because you have nothing to back it up.

In reality it is simply part of another entity. The Fox Valley was part of the Wisconsin Central; same officers, same shareholders, same lobbyists, same lawyers, same everything. But they say to the ICC, Please close your eyes and pretend that we are not a rail company, and then if you pretend that way as they did all through the period of the 1980s as the General Counsel just testified to, then we are free from all labor protection. So that is what happened there; the carriers said, That could not apply here because there are two railroads involved, but really it was the same issue.

I take frankly very little comfort from the General Counsel's view that the ICC will look at the things carefully since that was about the only case that they did, and that was over the objection of the entire staff recommendation of the ICC. They all filed in and said, We recommend 10901.

Let me just be very brief in this because I know your rules here and say what we have here is a profitable railroad that is doing well, it's not like there is a fire sale and we have to get rid of it. No one looks at this and says, Do we have to get rid of a whole lot of employees? Frankly, it made a profit. But the Canadian government operating through the CN and the Grand Trunk and the CV says, Let's sell it.

Now there is a buyer. The Providence & Wooster Railroad wants to buy it. They offer a lot of money. But the CN, again a foreign company, says, We have a secret bidding process, we will not open it to the public or to you or anyone else, and somehow or other the bid from the P&W is rejected without comment, thank you very much for sending us your offer for \$30 million, we do not want it.

And then they searched for the most notorious company in the country to find RailTex and to say, RailTex you exist because of this loophole, you, Mr. Flohr and Heather Gradison and others have fashioned this loophole, you have created 23 railroads through it; we are going to work with you in Michigan and Ontario and Nova Scotia and other places to sell off our lines. For what? To break the collective bargaining agreements and to throw the employees out and therefore to make more money to the seller and of course to the buyer.

So what we really have is a sham transaction, plain and simple. I am sure, as Attorney General I am sure you saw many of them, and that is when they come in they say, Here we are, we are a new company and we are going to provide you with all these great serv-



ices and take care of you, and in the name of efficiency we have to get rid of most of the employees.

The fact is when you scratch the surface what you see here is a company that says, We are going to have a job continuation program and we are going to make sure if anyone is looking for jobs here, they can move, for example, to the Chesapeake & Virginia 700 miles away and get a job on one of our other rail lines if there are any openings, and of course we have no evidence that there would be.

So we look at this and say if the CN were were operating in good faith, and it is not, that is what we really should be focusing on here as well as RailTex, they would sit down and negotiate with the unions and work out an agreement.

If RailTex were operating in good faith, it would sit down and negotiate with the unions and work out an agreement, but instead they go through an elaborate sham to create a new company with no assets and tell us that even though they have the same trains, the same executives, a go team that will come in here and operate the train system, the same computer system for the other 23 rail lines and all the rest of it, please close your eyes and pretend the emperor has no clothes or does have clothes. And in this case what we are urging is that as you look at this, you say to Mr. Flohr, Thank you very much, but we'd like to treat the employees with the same dignity and loyalty that they have given to this rail line for generations.

Thank you.

Senator JEFFORDS. Mr. Thornton.

Mr. THORNTON. You know, I get this written out and there is too much to read in five minutes.

Senator JEFFORDS. It will all be made a part of the record.

Mr. THORNTON. This statement was written to more or less let you people know the plight of people across the country, the railroaders and the Central Vermont, especially here now.

Now the implications are in my opinion that we are actually living under the parliamentary laws of the Canadian government. We are owned by the Canadian government. Therefore, they have control over our lives. These people in Vermont, it really upsets me very badly that a foreign government can sit up there and pull the strings and control people's lives here in Vermont.

After Vermont, then it is Detroit and the Grand Trunk Western. I represent those people. It really upsets me. This CV bill of sale is not a ICC 10901 transaction in the first place, this is a money-making railroad. Also it is not up for abandonment. There is no way you are going to abandon it; you would not let it happen, and I know Bernie would not let it happen. And if this is sold to—if the ICC lets it be sold to RailTex, it should be under 11343 in my opinion and it needs to be determined if revenue is made on the Central Vermont Railway, did it come back to the Central Vermont or did they go to Bob Walker and the Grand Trunk Corporation. They have no liquid cash flow here in a case like that. And we have no agreement with unions with the Grand Trunk Corporation.

Now late last year in 1993 I was told by a management person on the Central Vermont that Grand Trunk Western was overcharging the CV \$300 per pair of wheels. They fix the wheels down in

Detroit or Port Huron and they send them up here. I had somebody check out the number of wheels that they have ordered since 1989. The figures come out to \$356,000 overcharge. That is a lot of money if you think this is a marginally profitable railroad. I checked it out with the Port Huron car shop and it could not happen anymore, so I got that stopped. So now what we are asking now is that everyone join on together and stop this sale under 10901.

Was this the plan, they had to make it look non-profitable? That is a good question that needs to be answered. The U.S. Federal Government has put about four million dollars and the State of Vermont one million into the Conn River Line. This line was given to the CVR to maintain so Amtrak could travel the lines of the CVR. This is U.S. taxpayers money, and the Canadian government stands to walk away with it when they sell the CVR. This should not be tolerated by our government.

RailTex owns or controls 23 short lines in this country, Canada and Mexico. RailTex Bruce Flohr is Chairman of the Regional Short Line Railroad Association. He says RailTex is not a railroad. Excuse me, that's like the pilot of a 747 who swears he has never flown an airplane. He is a former assistant railroad administrator.

He has as one of his directors a Ms. Heather Gradison. Heather Gradison is a former ICC member from 1982 to 1990. She chaired the ICC from 1985 to 1990. Does this not seem like a convenient situation? Remember, we the taxpayers paid her salary at one time; now they want to kick us out of the jobs we earned the money to pay their salaries with, just to increase their own profits and destroy our way of life with the blessing of our own government ICC.

Canadian National CNA CEO Paul Tellier has stated that he wants one main line from Halifax, Nova Scotia to Chicago fed by a cluster of short lines. He has absolutely no compassion for the cluster of Americans he puts out on the streets through ICC 10901.

These people put out on the streets will become potential welfare recipients and become dependent on the U.S. Government's subsidy to survive. They should be given the opportunity to continue, as they have in the past, to work on the CVR as it is or with another railroad like the Providence & Worcester.

This subcommittee is called Labor and Human Resources. The Labor part is that this case has to do with the absolute annihilation of railroad labor unions which are allowed under the Railway Labor Act due to the presence of the apparent loophole 10901. Non-railroad pensions, RailTex is a railroad. If they were not a railroad, Bruce Flohr would not be in the chairman's position of the Short Line Railroad Association and have RailTex people on the American Association of Railroad committees.

The Human Resources part is that the people of this country have the Bill of Rights and along with that goes the right to the pursuit of happiness. The people have the right to form unions and to work to raise their families. The railroads have the right to strike, but at present they can be replaced. That is concerning the S-5 Bill that we need cloture in the Senate right now. ICC 10901 appears to be utilized instead of striker replacement, the reason being they know we are not going to strike the carriers; we know they can replace us.

So the carriers still want to get rid of people, so they have Heather and her plan to come up with 10901 and people like Bruce Flohr to come up here to rip and rape the jobs away from these people, and it is very, bad the way I look at it. The Canadian government has to right to unilaterally throw our people out on the streets by utilizing a loophole in ICC 10901 with the assistance of our former employees of the United States Government.

Thank you for your patience and understanding.

See, I told you I could not read it all. [Laughter]

Senator JEFFORDS. Thank you. You did a good job.

[The prepared statement of Mr. Thornton follows:]



## Joint Protective Board No. 60

Brotherhood Railway Carmen Division  
Transportation Communications International Union  
Affiliated with AFL-CIO and CLC



Larry G. Thornton General Chairman  
1348 Colorado  
Marysville, Michigan 48040  
(810) 364-6522



July 5, 1994

RE: Labor and Human Resources  
Sub Committee MEETING HELD IN  
St. Albans, Vermont chaired  
by Senator James Jeffords  
ICC 10901 and sale of CVRR

Honorable Chair and Members :

This written statement is intended to try to explain the plight of all railroad workers , and at this time the extreme situation and circumstances surrounding the sale of the Central Vermont Railroad and the adverse effects on the employees of CVR. The possible implications , concerning a Foreign Government , "Canada" control over the livelihoods of American citizens , is of a nature that is or may be unconstitutional.

1. This CVR sale is not a ICC 10901 transaction in the first place . The CVR is not in any danger of abandonment . The CVR has made money the last two years . The future of the CVR as it is now, is encouraging . The potential for Intermodal traffic to increase is apparent . If sold this railroad should be an ICC 11343 Transaction . If sold to Rail Tex , there will be 100 jobs lost in the Community of St. Albans and surrounding area and those hired , about seventy eight , will receive 15% less wages .

2. It needs to be determined , if the profits (revenues) return to the CVRR or does the revenues made by CVRR go to the Grand Trunk Corporation ? If so who decides then how much money will be required to run this railroad, which has no liquid cash flow , and shows none or little profit ? Who pays the bills accrued by the railroads ? The Railroads or the GTC. The Unions have no agreements with the GTC.

3. Late last year , 1993 , I was told by a CVR Management person , that the GTWRR was overcharging the CVR , \$ 300.00 for each pair of wheels ordered . Another employee checked , just how many wheels were ordered from GTWRR since 1989 . The total amount of overcharge , using the numbers given me , was \$ 356,000.00 since 1989 . I told the present Shop Supt. C. Louks about this , and he checked it out , and this was a true situation . Mr. Louks informed me that this has now been stopped . This surely made the CVR look like a losing proposition on paper , .WHY? Were they going to try to sell it under ICC 10901 ? Was this a plan?

4. This railroad , along with the GTWRR and DWPRR are owned entirely by the GTC which is owned by the Canadian National Railroad which is owned by the Canadian Government . They are bunched up in the GTC , Headquartered in Detroit, Mi. The railroads seem to never make any money . They claim to lose so much money every year , and it rises supicions , as to how any railroad could operate so long and make no money . Especially a railroad run by a Foreign Govnment . But they are right now hauling more freight than ever in their history . The GTC and CNR have approximately twenty six subsidiaries , who appear to have no employees , Board of Directors nor physical plant . But I understand the investments in these apparent companies is great . How can investments be made in nothing if such is the case?

5. The management of the CVR the past four years have not been pressured by the unions , although our contracts have been up since 1-90 . We wanted to work with them , so they could show a profit , in which they did .As far as profit sharing goes ,this year for the first time the employees received a profit sharing check. This at the same time they want to sell under 10901 .So that shows this railroad made a profit and has potential to make more as it is now . Thus it is not a 10901 transaction ,and also is not about to be abandoned .

6. The US Federal Government has put about four million dollars , and the State of Vermont one million , into the Conn River Line . This line was given to the CVR to maintain so Amtrack could traverse the lines of the CVR . This is US Taxpayers money the Canadian Government stands to walk away with if it sells the CVR .This should not be tolerated by our Government .

7. Rail Tex owns or controls 23 short lines in this country , Canada and Mexico .Rail Tex CEO Bruce Flohr is Chairman of the Regional Short Line Railroad Association . He says Rail Tex is not a Railroad .That is like a pilot of a 747 who swears he has never flew an airplane . He is a former Asst. Federal Railroad Administrator . He has as one of his Directors , a Ms. Heather Gradison . Heather Gradison is a former ICC member from 1982 to 1990 . She Chaired the ICC from 1985 to 1990 . Does this not seem like a convient situation ? Remember we the taxpayers paid their salaries at one time . Now they want to kick us out of the jobs we earned the money to pay their salaries with, just to increase their own profits and destroy our way of life , with the blessing of our own Government ICC.

8. The Canadian National -CNNA- CEO , Paul Tellier has stated that he wants one main line from Halifax , Nova Scotia to Chicago , fed by a "CLUSTER" of short lines . He has absolutely no compassion for the CLUSTER of Americans he puts out on the streets through ICC 10901 . These people put out on the streets will become potential welfare recipients and become dependant on US Government subsidy to survive . They should be given the opportunity to continue as they have in the past , to work on the CVR as it is or with another railroad like the Providence and Worcester .

9. Paul Tellier has a plan . Get rid of ten thousand Canadian workers and eleven hundred GTWRR and CVR workers by the end of 1995 . The CNR and the GTW , CVR , had 86000 employees in the early eighties and they made money , I understand . Now they have about 30,000 and cutting and are losing money . This does not add up . This figures out to almost two thirds of the work force gone . Tellier is a former top aid to Brian Mulrooney , a former Prime Minister of Canada . The Management of the GTC -GTWRR -CVR-DWPRR , do not have a free hand to operate these railroads like they should . They have to do as the Canadian National (alias Government) says to do . This conflicts with US FRA Laws and Labor Laws , in my opinion.

10. The fact that these employees have given their loyalty and lives for this CVR , and the fact that Paul Telliers only reason for wanting to dump these employees and the CVR , is that this would be one of the Cluster of short lines feeding his CN-CP merged railroad in the future . The United States will become a land bridge for the CNR and a Rail Tex Cluster .This will be a direct line from Halifax to Mexico .

11. We are trying very hard to get HR3866 passed as Law . Reason being , that the past discretion utilized ,was no discretion, when Heather Gradison Chaired the ICC . The new ICC may utilize discretion , but the next ICC may revert to the ways of the past ICC and rubber stamp 10901 transactions in seven days .This past ICC has not acted in the interest of the Public or the American workers . Possibly the present ICC will use descretion and judgement fairly .

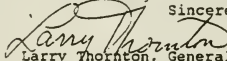


12. This Sub Committee is called Labor and Human Resources .The Labor part in this case has to do with the absolute annihilation of Rail Labor Unions ,which are allowed under the Railway Labor Act , due to the presence of the apparent loophole in 10901 , "Non Railroad" entities . Rail Tex is a Railroad . If they were not a Railroad , Bruce Flohr would not hold a Chairman position on the Short Line Railroad Association, and have Rail Tex people on the American Association of Railroads , committees.

The Human Resources part is that the people of this country have the Bill of Rights , and along with that goes the right to the pursuit of happiness . The people have the rights to form unions and work to raise their families .The Railroaders have the right to strike , but at present they can be replaced .ICC 10901 appears to be utilized instead of striker replacements . The Canadian Government has no right to unilaterally throw our people out in the streets , by utilizing a loophole in ICC 10901 , and with the assistance of former employees of the US Government .

Thank you for your patience and understanding .

Sincerely



Larry Thornton, General Chairman  
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## RAILTEX, THE COMPANY... AN INNOVATIVE APPROACH TO RAILROADING

RailTex now owns or operates 23 short line railroads across North America. Our strategy is to grow through additions to our portfolio of short line railroad properties, seeking overall diversification with respect to geography, customers, commodities and connecting railroads. We believe RailTex and the short line industry have helped to revitalize the railroad industry and the communities it serves. RailTex has received industry-wide recognition for its innovative approach to decentralized management, which places primary responsibility for each railroad with local management, and its incentive based compensation programs, which reward employees for improving customer service and operating results. We believe in supporting the communities our railroads serve by purchasing supplies and services locally, using local financial institutions, and actively participating in civic organizations.

For more information on RailTex, please call  
210-841-7600

# RAILTEX, INC.





# Joint Protective Board No. 60

Brotherhood Railway Carmen Division  
Transportation Communications International Union  
Affiliated with AFL-CIO and CLC



Larry G. Thornton General Chairman  
1348 Colorado  
Marysville, Michigan 48040  
(810) 364-6522

July 5 , 1994

RE: Rail Tex "A Railroad" Not Eligible  
for ICC 10901 Exemption .Brief History

Senator James Jeffords,Chair  
of Labor and Human Resources  
Sub Committee ,Meeting  
St Albans , Vermont

Mr. Chairman, Sir and Members :

This is a break down in simple language of Bruce Flohr's own  
brief History of Rail Tex , attached . By paragraph .

1. In 1984 Rail Tex began operating its first Railroad , the San Diego & Imperial Valley Railroad , its first RAILROAD.
3. Rail Tex is proud of its success in operating Short Line "RAILROADS" .
4. Rail Tex has received several "AWARDS". GOLDEN SPIKE ,RAILROAD PRODUCTIVITY ,GOLDEN FREIGHT CAR, SHORT LINE RAILROADS OF THE . YEAR AWARD.
5. Rail Tex an Industry leader ."What Industry?" RAILROAD.Can handle railroad challenges.Car supply , asset tracing"chasing?", or PURCHASE AND OPERATIONS OF SHORT LINE RAILROADS .
11. Engineer training at "OUR"Rail Tex , Austin and Northwestern RAILROAD.
17. RAIL TEX SHORT LINE OPERATIONS." "Rail Tex is a Railroad.

This is written to prove that Rail Tex is and has been a Railroad all along. They do not qualify as a Non-Railroad Entity under ICC 10901 . They are a Railroad , and should be treated as such , just as much as the Providence and Worcester , or any Class I Railroad in this country . They own and operate Railroads . They are as much a railroad entity as the Canadian National Railroad or the CSXRR .

They should be required to by this CVR under ICC 11343, and if they apply under ICC 10901 they should be required to grant New York Dock Protections , by ICC discretion.

The CVR is not in danger of abandonment , with Amtrack running the rails . This is a Canadian Government plan in my opinion .

Sincerely

*Larry Thornton*  
Larry Thornton

**RAILTEX SERVICE COMPANY, INC.**

4040 Broadway, Suite 200  
San Antonio, Texas 78209  
210-841-7600

**History of RailTex:** RailTex was formed in 1977 as a railcar leasing company. In 1984, RailTex began operating the San Diego & Imperial Valley, its first short line railroad. The railcar leasing division was subsequently sold in 1989 and RailTex now devotes its talents and resources to managing its short line railroads. RailTex operates 23 short line railroads in 17 states, Canada and Mexico.

RailTex had total assets on December 31, 1993, of \$112 million and 1993 earnings of \$3.6 million on revenues of \$59.8 million.

RailTex is proud of its success in operating short line railroads. The corporation believes in devoting resources in the form of time, talent and money to improve the rail transportation industry.

RailTex has received several industry recognition awards - Golden Spike Award (1988-1989); Railroad Productivity Foundation Award (1988); Entrepreneur of the Year (1988); Inc 500 Magazine (1989, 1990 and 1991); Golden Freight Car Award (1991); Short Line Railroads of the Year (1992) and Golden Freight Car - Distinguished Marketing Award (1993).

In summary, RailTex is an industry leader, equipped and staffed to handle railroad challenges, whether they be car supply, rate negotiation, asset tracing and management, or the purchase and operation of short line railroads.

#### **UNIQUE WAYS RAILTEX OPERATES ITS RAIL SUBSIDIARIES:**

**GG Team - Staff** from the General Office, employees from subsidiary railroads and outside consultants dispatched to a new property to assist in all phases of start-up.

**Employees** are hired from affected Class I employee rosters and the local work force.

**Transportation Specialists** work all positions and alternate during shifts.

**Transportation Specialist Basic Training - New** employees from all railroads are trained in basic skills of switching cars, safety at the worksite and rules.

**Supervisors of Locomotive Engineers Training Class -** A five-day class for SLEs covers the material taught in the engineer certification class as well as the requirements of 40 CFR 240 concerning engineer certification.

**Engineer Certification -** A five-day engineer certification class conducted at our Austin Northwestern Railroad. Instruction covers safety, mechanical condition of equipment, air brakes, train handling, operating rules, haz materials/emergency response, and federal regulations.

**General Managers** have full management, hiring and pricing authority. Each General Manager is head of safety for his property and is expected to be the leader of the safest possible operation.

**Hazardous Material Training - General Managers and Operation Managers** attend AAR Hazardous Materials Training courses in Pueblo, Colorado.

**AX Boxes (Accident Boxes)** with each crew for immediate accident investigation to minimize liability exposure. AX boxes include cameras, voice recorders, and tools necessary to record accident scenes.

**SERTIFI (Simulated Emergency Response to Infrequent Incidents) -** Simulated accident/spill training. Staff/local law enforcement/fire departments react; actions videotaped and reviewed and critiqued by all participants.

**Profit Sharing** is distributed quarterly to all employees.

#### **UNIQUENESS OF RAILTEX AS THE PARENT COMPANY:**

**Diversified Revenues and Locations -** Geographic and commodity diversification within RailTex short line operations means any downturns within one business area will be supported by our other ventures.

**Professional Managers** from RailTex are always available to handle line problems or issues with the connecting carriers. This professionalism comes from our personnel having held high level management positions on Class I railroads, such as General Superintendent of Transportation. Management and employees are encouraged to refine skills by attending seminars and through community involvement.

**Leadership in the Industry** demonstrates that RailTex wants rail transportation to grow, to benefit all concerned.

**Safety** of our employees has always been of major importance to the RailTex organization. This philosophy is an integral part of the RailTex railroad operations.

**Emphasis on Innovation** is the attitude of all the RailTex and subsidiary staff. The unique way RailTex operates its short lines testifies to the development of new ideas.

**Local Decisions -** All pricing, service, employment and purchasing decisions are made locally by the General Manager on that railroad. Corporate Headquarters only sets policy and provides consulting services.

**Equipment -** RailTex has a fleet of rail cars available to customers. These cars are used to supplement railroad supplied equipment.

Senator JEFFORDS. Mr. Concannon.

Mr. CONCANNON. My name is James R. Concannon. I reside at 34 Jonzetta Court, Milton, VT. I am an employee of the Central Vermont Railway. I have worked in the railroad industry for 28 years, 26 of them on the CV. I am also District Chairman of the Transportation Communications Union, Clerks Division, representing the clerks on the Central Vermont. I have held this position for 15 years.

There are many issues to address here: economic issues, legal issues, ethical issues, emotional issues, all involved in the RailTex proposal to acquire the CV under Section 10901 of the Interstate Commerce Act.

One issue is the exploitation of the legislative intent of Section 10901. This law was enacted to save branch lines which were likely to be abandoned by the major railroads. The intent was to provide some level of rail service to customers who would otherwise have to rely on other, probably more expensive forms of transportation. It was never intended to allow a company to buy a property the size of the Central Vermont which has 329 route miles, 175 employees, and serves four states.

The major attraction of Section 10901 is that it allows a so-called "nonrailroad entity" to purchase railroads and shed whatever labor agreements are in force.

The CV is not a candidate for abandonment. It would not even be available for sale except that its parent company, the Canadian National, needs an infusion of cash because of its own problems. Section 10901 was not intended as a vehicle to destroy jobs.

We are now faced with the proposed sale of the CV to RailTex, a so-called nonrailroad entity even though it owns 23 railroads and by its own admission has no other business than railroads. RailTex has stated its intent to abolish 100 jobs, or 57 percent of the work force.

This brings us to the first economic issue. RailTex proposes to cut 100 workers and impose a 15 percent pay cut on the remaining 75, calculated at \$35,000 a year, will result in a diversion of approximately \$3,900,000 per year from the local economies to the RailTex economy. Should a nonrailroad entity do this just because Section 10901 allows it to? Everything legal is not ethical. Are RailTex's interests in making money more important than the economic interests of 100 families who in most cases will face severe financial deprivation from its actions? What about the burden these economic refugees will put on government agencies and programs?

Another economic issue has to do with policy. Should decisions of agencies such as the ICC be made with the goal of making large corporations richer and individuals poorer? That was certainly not the intent when the ICC was formed in 1887. Then, rich, unregulated railroads were preying on powerless citizens. They needed regulation. As evidenced by RailTex's misuse of Section 10901, they still do.

A legal issue we need to address here is the union agreements. These are legally binding contracts, no different than similar contracts between businesses and individuals. They have been arrived at through good faith bargaining and have evolved over a period of over 80 years. But under Section 10901 as interpreted by the ICC

over the past 13 years, and upheld at least in part by court decisions, they can be discarded as if they had never existed. Such powers belong only to the National Labor Relations Board. Congress never intended to give them to the ICC.

We also need to address ethical and emotional issues. The employees of the CV have had only one raise in pay of 6.57 percent since January 1, 1984. Now we are being told that not only must four out of every seven of us give up our jobs, but the remainder must take a 15 percent cut in pay. But not to save the company. The company is not even endangered, except by the machinations of its parent, the Canadian National. The Canadian National, and its subsidiary, the Grand Trunk Corporation, are now attempting to use the 10901 loophole to make an end run around their obligations to negotiate contracts that expired in December, 1989.

These issues stir strong emotions in the community, as they rightly should. Families face the likely loss of their main source of income; merchants face the loss of millions of dollars annually for their businesses. RailTex's proposal to relocate some employees to railroads in other parts of the country such as Indiana, Texas or Utah is not a realistic option for many people who have obligations which hold them to the local area.

I have described the issues involved as concisely and accurately as I could in the time allotted. It is our sincere hope that you will look favorably on our arguments and support the legislation to abolish Section 10901.

Thank you.

Senator JEFFORDS. Thank you very much. That's excellent testimony from all of you. I appreciate it.

Mr. Garvey, under 10901, you heard the General Counsel testify and the recent issues indicate in ruling in this suit they well exercise their powers to insure that there is adequate taking care of the employees in any matter of this nature.

Do you accept that or are you concerned about it?

Mr. GARVEY. Well, Senator, I am very concerned about it because we only have one example of where they have done this that I know of, and that was a case last week where apparently the carrier lied on its application form, so where they clearly lied, the Commission said, Wait a minute, you lied. We are not going to let you go forward.

I would hate to risk the jobs of the people here and the good name of the Central Vermont and the possibility that the new majority on the Commission is going to be much more sympathetic to workers in the community.

One of the things that happens is that people forget the impact on that community when a RailTex comes in such as they did on the Southern Missouri and the Northern Arkansas. We had thousands of local citizens signing petitions saying, Please do not come in here. They came in with their go team, everything is eliminated, all those jobs are gone, all those little merchants who depended on those people, all those—you know. It really is a community buster as well as a union buster. And so I would not be very comfortable waiting for the ICC to make that decision. If they want to tell you that in advance, I guess that would be all right.



Senator JEFFORDS. Getting rid of 10901 is a national issue for the unions, is it not?

Mr. GARVEY. It certainly has become such as a result, quite honestly, Senator, of the Central Vermont. I think this is the center of the railroad industry right now.

Senator JEFFORDS. You pushed for and got it changed.

Mr. GARVEY. Right. Right. I thought you meant more recently. That is true. It was once enacted and vetoed.

Senator JEFFORDS. Right. Now the complaint of the railroads which brought about a lot of this activity in the 1980's is the inability under the work rules of the union to be able to profitably run or run it as profitably as it should be run because they cannot terminate the employment of unnecessary employees.

What is your response to that?

Mr. GARVEY. We acknowledge in the laws of this country a collective bargaining relationship, and generally speaking, my whole experience, whether it is the National Football League or whether it is working for the railroads, the employer has tremendous power, economic power in dealing with the employees. And if they want to sit at the bargaining table and enter into an agreement, I have yet to find a union that is unwilling to do so.

When I hear that the unions on this railroad, for example, have not had a new agreement since 1990, one increase since 1984, it would suggest that the power has been with management and not with the unions in terms of these relationships. So I do not see why, in fact I guess if you had a magic wand you might say that they would have to submit these disputes to some kind of binding arbitration rather than to allow the continuation of agreements and people taking less and less despite the increase of the cost of living.

Senator JEFFORDS. So you do not believe the ICC's discretion now as they say they are willing to exercise would be sufficient to protect?

Mr. GARVEY. No, I do not. I'd like to, but the problem is that their record has been so abysmal; described by General Counsel as being very convenient.

Senator JEFFORDS. You do not have any faith in the Clinton Administration and their appointments?

Mr. GARVEY. I would prefer not to comment on that. I will leave that to Congressman Sanders.

Mr. SANDERS. Some of us are independents, Senator. [Laughter]

Mr. GARVEY. I think if we could get this bill passed it would do wonders, because it would then say to the railroads, Stop trying to cheat; sit down and negotiate and work it out. New York Dock is not a perfect answer; it is just a start. And I think that if this bill passes and is signed into law, you are not going to see a disaster; what you are going to see instead is a hiring corporation or companies like RailTex, they are going to hire the lawyers who know how to make deals.

Senator JEFFORDS. Now in reference to your last comment, New York Dock is not the answer, under New York Dock, the management, the owners here will say that they cannot go any other way to be able to sell their line because of New York Dock, so they have to have some way to get around New York Dock because if you pay

a quarter of a million dollars to each of four unions, New York Dock might require about \$40,000 a year of option that the possibility of that being an acceptable way would kill any possibility of a sale. And therefore, I guess that raises the question in my mind is the goal here to kill a sale and keep working under CN? Or is it the goal—what is the goal?

Mr. GARVEY. Well the goal was to say we do not want to have the Central Vermont sold under 10901 where any employer could simply fire all the employees and get out from under the obligation of the law. So it seems to me that one option would be for the State of Vermont to buy the Central Vermont from CN and protect the employees.

A second option would be to back an employee, a true employee ownership plan where the employees would have a real say as to how the railroad is run, and third is to open up the bidding process.

Senator JEFFORDS. An ESOP plan? Would you agree with ESOP?

Mr. GARVEY. Not the ESOP that was proposed because it was really sort of a Son of RailTex in that what they were trying to do is achieve a 10901 exemption. We are saying if you had an honest employee plan with all the employees involved, not the RailTex—or these ESOPs that had been proposed for just the management people, not the workers.

The third option is to open up that bidding process and see why the P&W cannot buy it. There are real buyers out there that would like to have the Central Vermont.

Senator JEFFORDS. Part of the P&W offer was basically for the CN to buy it out and then get CV.

Mr. GARVEY. Well, you know, what would be nice is if you could get those bids, and I do not think you can because we have asked for them, and both the CN and the CV have said they are not public, and it seems to me that this should be public. I mean, we are talking now about something that is terribly important to the integrity of the State of Vermont and the people here in the community.

If a hundred people are thrown out of work, it's going to cost the people here a lot of money, so why not let honest bidding come along? Or have RailTex sit here and say, Listen, we will support the idea of this being an 11343 sale, we are a railroad, we are going to come clean; the 1980s are over. We are a railroad, so we will take care of our obligations. But they will not do that.

Senator JEFFORDS. I'd like to point out that the Grand Trunk is a United States corporation, I am pretty sure. Do you have any information on that?

Mr. GARVEY. But it's owned by the CN.

Senator JEFFORDS. I realize that, but I think the seller here, at least your position ought to be that the seller here is a U. S. business, I would think.

Mr. GARVEY. Well, it's ultimately the Canadian government and in my opening remarks I said there are two bad guys here; one of them is the Canadian government and how they are operating here by using a loophole in American law to fire the employees and disregard our collective bargaining. They could not do it in Canada. The laws will not allow them to do it in Canada. They will not even

buy railroads in Canada because they cannot get out from under the collective bargaining agreement.

So it seems to me we ought to be saying to the Canadian government, Shame on you, shame on you. You should not come into this country and take the money, take the good will, get the loyalty of the employees and then dump them off in the street while you sell it off to a corporation you know is going to fire them, all of them. They are going to fire all of them, Senator, not just some of them, all 175 employees.

Senator JEFFORDS. Let me get back to the facts that we talked about here. The testimony of the CN and I think their indications are that they may join the CP and if they join with the CP, then the more profitable way for them to ship to the north is up the Delaware and Hudson and up the other side of the river, the old N & H. And therefore the only option would be to let the CV run itself into the ground and be abandoned. So I just wonder, do you find any credence in that?

Mr. GARVEY. No.

Senator JEFFORDS. And if not, why not?

Mr. GARVEY. Because the P&W stands ready today to still bid \$30 million for this supposed broken down old railroad, and it seems to me that if you have got a buyer out there for \$30 million, you cannot come in here crying poor as they are doing. Why not sell it to people who already said in their bid they want to protect the employees under New York Dock? So the problem you have is—

Senator JEFFORDS. Well that is an assumption that that is \$30 million in cash. My understanding is that it's half the P&W stock which would mean that essentially they would end up owning P&W as well as the CV.

Mr. GARVEY. Well they will not tell us. The fact is that we have asked them, and here is what I find odd, that if somebody offered you \$30 million for your business and you said, Yeah, I do not like the fact that you have a little bit too much stock in here or something, you might want to at least pick up the phone and say, Would you like to come in to St. Albans and talk about it? Instead of that we got a letter, Thank you very much. We reject your bid.

Somebody's not operating in good faith. It could not pass the smell test. Here we have a profitable railroad that is owned by the Canadian government through an American corporation selling it off to the most notorious company in the United States in terms of seeking this loophole that supposedly pays more money for it by far a railroad that the P&W wants to bid for it, and all of this is done in secret, it just could not make sense. That is why we say stop the loophole and make them act like all the other railroads.

Senator JEFFORDS. So then if the end result is no sale, the unions would be happy here?

Mr. GARVEY. Yes. I mean, why not? Because everything will go along as is; they will sit at the bargaining table and negotiate collective bargaining agreements or they will sell it to the P&W or they will open up the bidding process because once your bill passes and becomes law, now instead of having the RailTex of the world all around, you are going to have an honest to God railroad trying to bid for the Central Vermont. We'll run it like a railroad.

Senator JEFFORDS. This is from a representative of the unions. The bill, as we have it, places it back in the position of 11343.

Would you object to it being very specific that under 10901 that the ICC shall handle the situation as 343 but not be restricted by the New York Dock case?

Mr. GARVEY. It's an interesting question, Senator, and—

Senator JEFFORDS. It is an important one.

Mr. GARVEY. Very important. Because in the oversight hearings that were held recently, in answer to Congressman Sander's question to General Counsel who was just here indicated that the ICC had the authority to impose something less than New York Dock. I just asked him during the break whether that was really his answer and he said yes, it is, but there was no precedent for it. So it would be created, in essence by the General Counsel's recommendation to the ICC.

If you drafted a bill that really accomplished the objective of continuing employment for people in railroads because that is what New York Dock is all about, people do not want a free ride; they do not want to get 6 year's pay for not working and they do not. What they want to do is work, be part of the industry, and they want to be retrained if that current purchaser could not have a job for them.

So if you could really get to the real issue and that is what do we do about people who have spent 40 years or 30 years working for the railroad and then somebody comes in and buys it, how do you protect them and their dreams and their futures and their families and their community? But instead what we get into is a lot of gobbledy-gook about is this a consolidation, what this is. Is it a sham transaction to get out from under what the P&W would have to pay if they bought it?

Senator JEFFORDS. The answer that business would give is it is also a way to get out from under the work rules that still apply wherein you have unnecessary workers who are not providing a gainful effort for the railroad, would you be willing to include in that the examination of the employees and the ability to eliminate jobs no longer required for the efficient running of a railroad?

Mr. GARVEY. I will let these gentlemen answer that questions, but I think really that is decades ago. I think now it is very efficient, but I will let them answer that. And I would point out that is what collective bargaining is called; you sit down and say we need fewer people. And this happens every day; it is happening now on the Fox Valley Western where they have New York Dock imposed. Not all of those people are working. They had to negotiate with the unions about what happens to those people. So it is a process that has some flexibility.

Senator JEFFORDS. Thank you. Yes.

Mr. CONCANNON. I'd like just like to comment on this that there seems to be some misconception that there are a whole bunch of people hanging around the railroad drawing pay and not doing anything, particularly around the Central Vermont. This is definitely not the case. I have worked for the Central Vermont for 26 years and everybody most of the time is busy. There aren't a lot of people out there just drawing pay and performing no services.



And this is a misconception that some parties like RailTex and other companies try to get you to believe.

Senator JEFFORDS. Mr. Thornton.

Mr. THORNTON. I have one comment. I think a lot of people may be misconstruing what New York Dock protections actually are. It gives you—RailTex wants to come in here and say, Yeah, we are giving you labor protection for 6 years under New York Dock. Everyone is going to be happy. Well it's their job to get work for these people, to keep these people working, not go home and collect \$240,000. They aren't going to honor the commitment. They would not do that. They say they will keep you working, but—I know I will get affected by New York Dock on the railroad I work for, the Grand Trunk Western. We ended up with another agreement where we got lifetime protection, but I will not get into that.

New York Dock is 6 years. If Bruce Flohr is such a real fancy guy that he can get all these awards that he got on the railroad situation and industry, and he cannot find enough work for these people to do, I think management would not be very good. I think that is the problem with the present management. They do not manage the way they should.

They have got absolutely dedicated employees, they are fantastic railroad workers. They have to manage, they have to go out and get more business, they have to build their business and they are building it. They hauled more traffic on the Grand Trunk and the CV than they ever hauled in their history. This is going on right now. And here comes Bruce Flohr and he wants to cut these people out, just like Jim Concannon says.

These people work, they are the ones that are making the money for the CV. They are profitable. They are not to be abandoned. And if CN or CP and the Canadian government come up with some conspiracy, trying to pick out a way to dump the CV people out on the street, plus the railroad, the P&W is over here. Give those Canadians some competition, let's work with Americans and the P&W. I beg you to do that. Because I know it would work. It would build our country, and at least one guy that I know in this country that it would instill a little bit of faith in the country again, and that is me.

The Constitution of the United States has been trampled all over by the corporations of this country, our own people sometimes are own worst enemies, and it's time for it to stop.

Senator JEFFORDS. Thank you for your excellent testimony.

Congressman Sanders.

Mr. SANDERS. Thank you, Senator. Let me go over one point. It has been suggested by some that what New York Docks is about, and what the unions want and the workers want is nothing more than 6 years of \$40,000 a shot. Some people might think that they were Senators who were retired, but obviously that is not the story.

What is New York Dock and what really happens? What is the purpose of it? Why was it instituted and what is the reality of it? Who wants to respond?

Larry.

Mr. THORNTON. The New York Dock comes into effect in—they have the New York Dock I and New York Dock II. The 1979 version is the one we go under, New York Dock II. That gives you 6

year's protection, labor protection. In other words, the railroad comes and buys another railroad, you know you are going to work for 6 years. If you do not and you go home, you are going to have a month's test period that will be your average wage while you are sitting at home. Now if you did not work enough hours, you aren't making as much as you were making, that is your fault. But if you worked overtime, that 12-month test period comes into play. But that is only on the people that stay at home. And if you are running a railroad, you are going to have your people working.

Mr. SANDERS. So what is the reality. If I own a railroad and my option is to give you \$40,000 a year to stay at home or to put you to work, what would a railroad do?

Mr. THORNTON. The only ones I have ever seen operate, they put them to work.

Mr. SANDERS. So we are not really talking about people sitting at home collecting \$40,000.

Mr. THORNTON. Just in case you would, just in case two or three guys out of 178 had to sit at home, or women had to sit at home, they would get this test period average, 12 months before the transaction, that is your test period, that is what they would get. And if then they needed them, even an implementing agreement it can come up to where they are on an extra board, and if you need them for a day or two, they can come back.

Mr. GARVEY. If I can just add one thing there, all it really does say then is we should be implementing agreements, so it sort of says, OK, you carriers, now you have got to sit down and negotiate with the unions. So I've got a deadline of an expiration of a contract, this thing is going to go to court, so now you are on the courthouse steps and suddenly everyone wants to talk settlement.

If you have to have that implementing agreement, it would force those carriers—they would say, Oh, my God, we cannot operate this way. Somehow or another they would figure out how to negotiate with the union. And oftentimes it takes less than 6 years because what they want is a fair agreement.

Mr. SANDERS. Mr. Concannon, sometimes we talk about these transactions, we talk about railroad economics and high faluting stuff. Let's talk about the average worker here at Central Vermont and what will happen if this transaction goes through.

How long have you worked for CV?

Mr. CONCANNON. 26 years.

Mr. SANDERS. Is it a fair statement that many of the workers here have worked for CV for decade?

Mr. CONCANNON. Yes, they have. In fact, most of them have worked for anywhere from 10 to 40 years.

Mr. SANDERS. What is your guess in reality, what will happen to somebody who works for the company, lives in Franklin County and has worked here for 25 years, what is going to happen to them if this transaction goes through?

Mr. CONCANNON. They will probably lose their jobs. If we take— if we got 100 jobs out of 178, as I stated, that is four out of every seven people that are going to lose their jobs. More than half are going to be unemployed.

Mr. SANDERS. And what happens to the family of a fifty-year-old worker that has some kids who maybe had some hopes of going to

college? What kind of employment opportunities will there be here in Franklin County?

Mr. CONCANNON. Not very many.

Mr. SANDERS. Not very many. Would it be a fair statement—would it be a fair statement—I do not mean to wax eloquent here, but would it be a fair statement that many, many lives, many, many families lives would be severely ruptured and perhaps destroyed as a result of this transaction?

Mr. CONCANNON. I am sure they will.

Mr. SANDERS. I do not have anything more.

Senator JEFFORDS. Thank you very much.

Our final panel is Mr. Robert Walker, the Vice-president of the Grand Trunk Corporation; Mr. Bruce Flohr, President, RailTex Service Company, Inc., and Mr. Roger Desrosier, the Chief Executive Officer of the Northeast Warehousing and Distribution, Limited.

Mr. Walker, welcome to St. Albans and I look forward to your testimony and want you to know that we respect your for coming and your willingness to be here to tell us what it's all about from your perspective.

**STATEMENTS OF ROBERT WALKER, VICE PRESIDENT, GRAND TRUNK CORPORATION; BRUCE FLOHR, PRESIDENT, RAILTEX SERVICE COMPANY, INC.; AND ROGER DESROSIER, CHIEF EXECUTIVE OFFICER, NORTHEAST WAREHOUSING AND DISTRIBUTION, LIMITED**

Mr. WALKER. Well, thank you very much Senator Jeffords.

Senator JEFFORDS. I have your testimony in writing. If you wish, I will cut you off in five minutes or you can summarize and we will make it all part of the record.

Mr. WALKER. Thank you very much, Senator Jeffords. We at CN North America are pleased to be here and also to present, if you will, our side of this issue. Because we are not only talking about, as was so eloquently put here today, the future of the railroad but we are also talking about the future of families that depend upon the railroad as their livelihood.

The sale of the CV has evoked a great deal of emotion and fear; accusations come very easy, and reason sometimes in the middle ground is sometimes more difficult to achieve. But this is a hearing that I think gives an opportunity, as you pointed out earlier, to begin looking at the facts and then drawing some conclusions as to what is really fair under the circumstances.

During the 1980's generally for the railroad industry was a positive and profitable period for the railroads, and that was brought about by the Staggers law which allowed the railroads to be much more competitive.

The Interstate Commerce Commission was very involved in that process of implementing that law, and one of the important elements of that period of strengthening the railroad industry, not only from the standpoint of the corporations themselves but the ability for them to provide jobs and provide essential services to the growth of businesses in this country, one important component of that success was the ability to sell underutilized branch lines to locally-based short line railroads. And that essentially preserved jobs

while permitting the big railroads to do what they do best, and that is transporting large quantities of freight to major corridors. CN North American, Grand Trunk Corporation and its U.S. subsidiary as part of that larger system is behind the rest of the industry in this area somewhat, in part because it has less flexible regulatory aspects in Canada and consequently, as cost structures are imposed upon it, that makes it very difficult to compete.

It is also partly true because of the significantly underutilized infrastructure. Ninety percent of CN North American's traffic moves over 30 percent of its network and the remaining ten percent is transported over the remaining 70. So with the high cost structure and competition with trucks it has eroded our margins and our ability to create the necessary profits to reinvest in the plant.

We decided to focus on three or five, I should say, key corridors and devote our resources to improving services in those corridors. We want to see strategic alliances with important rail and intermodal connections to permit us to gain access beyond the reach of our network, so we decided to begin merger talks with CP as was mentioned here earlier. The problem in Eastern Canada is very similar what faced the U.S. in the eastern part of the United States that resulted in the creation of Conrail.

And finally, we are going to reduce our costs basically in three ways. We are going to abandon and we are going to aggressively reduce costs by abandoning unprofitable, low density lines. We are going to seek purchasers for those lines that are marginally profitable that do not fit into our strategic plan and we are going to continue as all industry is in this country and in North America generally, continually to reduce employees in the core system and to develop more productivity as we have to compete with the motor carriers and other rail carriers in North America.

Let's go back a moment, if I may, to the decision to sell the CV. And how does the CV fit into this? The CV, while a separate corporation from an operating standpoint is served as an essential branch line from Montreal south into New England from CN. Its direct parent, that is Grand Trunk Corporation, a U.S. corporation have poured resources and effort into developing marketing opportunities such as distribution centers in Palmer, and in fact in preserving the Amtrak Montrealer and with considerable help from you, Senator, as a matter of fact. The results of these efforts, however, have been less than satisfactory.

Congressman Sanders in recent testimony, I believe it was in June, indicated that this was a profit-making railroad. In the decade from 1984 to 1993 reported positive operating income in only one of those years, and accumulated an aggregate of \$17 million in operating losses during that period. Over the period our net losses on a net basis were only in the black 5 years out of ten, and that was primarily from selling other assets from other sources of income rather than running the railroad. Measured against our strategic plan, CV will not be part of our future.

Senator JEFFORDS. I am going to interrupt you now. We'll probably get the rest in your questioning period.

Mr. WALKER. May I just—

Senator JEFFORDS. OK. We'll give you another minute.



Mr. WALKER. CV is not one of our strategic corridors. And in terms of the CN, CP merger which I mentioned earlier, if that merger takes place, more traffic will probably flow down the other side of Lake Champlain with a subsidiary of CP than on the CV.

So let me say this, that if in fact New York Dock is imposed on this transaction, simply we will not be able to proceed with this sale. As was mentioned earlier, the seller has the obligation and what we need to address here is what happens next. And before anyone celebrates, I think that we need to look at the facts that that will bring no victory, there is no job security in that approach.

We obviously cannot continue to invest in that property to the extent we have and we will begin the process of disinvestment, if you will, and that is not the ultimate solution I think to a corporation that has served New England and Vermont for so many over the years. I think RailTex is a good solution for that.

But let me just say one thing before I close and I'd like to talk about the fairness issue. The ICC over the last 10 years has not automatically imposed labor protection, but I'd like to talk about what seems to be fair in this country. In fact when Congress pays the tab for severance benefits, it did not agree to pay 6 years severance in the recent discussion of a vote to terminate the Interstate Commerce Commission. If fact, as I understand it, the representatives voted to pay \$25,000 to 600 workers who were going to lose their jobs as a result of that sunseting of the ICC. For example, IBM which has made billions over the decades, in its recent problems they have laid off workers here in Vermont as a matter of fact, they will pay 6 years severance. They in this case, I believe, paid up to 6 months severance.

Central Vermont Public Service Corporation, a public utility with no competition had recent layoffs. They have paid 1 year severance payments. I think the question here is—

Senator JEFFORDS. Mr. Walker, we will get back to the question, but I want to hear from Mr. Flohr and then I'll—

Mr. WALKER. And that is really my point, Congressman and Senator, because from the standpoint of fairness, I think there is another way to go. Thank you.

[The prepared statement of Mr. Walker follows:]

#### PREPARED STATEMENT OF ROBERT A. WALKER

Senator Jeffords, thank you for providing this opportunity for CN North America to present its side of this issue. Because we are talking not only about the future of a railroad, but also about the futures of the families which have depended upon it as a livelihood, the sale of the CV has provoked a great deal of emotion and fear. Accusations have come easy, but reason and a middle ground appear more elusive. I think we have to get beyond emotions and accusations. This hearing is an opportunity to begin looking at the facts and drawing conclusions about what is fair under the circumstances.

#### THE STRATEGIC CHALLENGES FOR CN NORTH AMERICA

The decade of the 1980's was generally positive and profitable for most U.S. railroads. One reason for that was the deregulation fostered by the Staggers Rail Act and the actions taken by the Interstate Commerce Commission to implement this congressional policy. Because of intense competition from motor carriers for all the freight we transport, railroads have been forced to reduce costs and improve productivity.

One important component to the success of the U.S. rail industry has been its ability to spin-off under utilized branchlines to locally based short line or regional

railroads that have preserved jobs while permitting the big railroads to do what they do best: transporting large quantities of freight in major corridors.

—CN North America has lagged behind the rest of the industry.

—In part because of less flexible regulatory regime and cost structures imposed in Canada.

—In part because we have grossly under-utilized infrastructure: 90 percent of CN's traffic moved over 30 percent of its network; the remaining 10 percent is transported over the remaining 70 percent.

—With a high cost structure, competition from trucks has eroded our profit margin.

By the early 1990's the magnitude of the crisis became clear: 1989 net income of \$200 million was converted overnight into about a break even year in 1990; a small loss in 1991; a loss of \$104 million on railway operations in 1992 and \$74 million loss in 1993. (Canadian dollars)

Aggressive action was necessary over the entire system. The company adopted a strategic plan that has four principal components:

—We decided to focus on five key corridors and to devote our resources to improving service in them;

—We want to seek strategic alliances with important rail and intermodal connections to permit us to gain access beyond the reach of our network;

—We decided to commence merger talks with CP to deal with the problem in Eastern Canada very much akin to what the United States faced in the 1970's with the creation of Conrail; and

—Finally, we are going to aggressively reduce costs in three ways:

(1) abandon, unprofitable, low-density branchlines;

(2) seek purchasers for marginal branchlines that could be made profitable in the hands of others;

(3) reduce employees on the core system to be retained.

#### THE DECISION TO SELL THE CV

Where does the CV fit in all this?

CV, while a separate corporation, from an operating standpoint has served as a CN branchline south Montreal into New England.

Its direct parent, Grand Trunk, and CN have poured resources and effort into developing marketing opportunities (such as our distribution centers in Palmer, which you will hear more about) and preserving its largest customer, the Amtrak Montrealer (with considerable help from Senator Jeffords).

The result has been less than satisfactory. Cong. Sanders has called the CV a "profit making railroad" (in his June 8 testimony before a Joint Energy & Commerce/Public Works hearing). In the decade from 1984-1993, the CV reported positive railroad operating income in only one of those years, and accumulated an aggregate of \$17 million of operating losses during that period. On a pretax net income basis, which includes sales of real estate and forms of other income, it did a little better, it was in the black 5 of the 10 years, but on a net basis losses exceeded gains by \$2.6 million over the period. Our shareholder is receiving no return on its considerable investment in plant and facilities, and on the rail operations, CV has been losing its shirt.

Measured against CN North America's strategic plan, CV will not be a part of our future:

—CV is not in one of the strategic corridors;

—In terms of strategic partnerships with major carriers—for traffic to the Northeast, Conrail is the important connection, and it prefers an interchange not with CV at Palmer, but in New York State;

—In terms of the CN/CP merger in eastern Canada, CP owns the railroad on the other side of the lake, and CV will not be part of that transaction if it occurs.

Therefore, CN North America decided to get out of the business of running the CV because it isn't part of our long term strategic plans, and we couldn't make a sufficient profit at it. After consideration of some alternatives, we have decided to sell the property to a competent operator who can make a profit with it. And we will redeploy what we receive for our investment in the CV to uses where it can make a return for us.

#### IMPACTS ON CV EMPLOYEES

Given that decision, the question is—What is fair to CV workers? And we at CN North America are prepared to be judged by that standard. If at the end of an ICC inquiry, it is determined that "fair" means six years guaranteed pay to those who lose their jobs, plus differential payments to those offered jobs, this sales transaction

will not go through. But, before anyone celebrates, that will bring no victory and no job security to any CV worker. CN North America cannot be forced to remain in a business we have determined to exit, and nothing will change where CV stands within the context of the strategic factors I just discussed.

CV and RailTex have worked to develop a program of severance payments and a Job Continuation Program, which Mr. Flohr will describe, to keep CV workers in the industry. In initial talks with CV labor representatives, they refused to discuss anything less than NY Dock labor protection, expressing confidence that the ICC would impose that on us.

If there is no progress at the bargaining table, we will explain what we are prepared to offer employees in submissions to be made by RailTex later this summer at the ICC.

For the last 10 years, the ICC has concluded that it would not automatically impose labor protection, and many here believe that result to be appalling; a loophole; or a sham. It's none of those things—it's an open door out of the chamber of horrors created by the inflexible, archaic rule of labor protection which preserves no jobs and applies to no other industry in the United States.

When Congress pays the tab for severance benefits, does it agree to pay six years severance? No. In a recent vote to terminate the Interstate Commerce Commission, the House of Representatives voted to pay \$25,000 to the 600 workers who would lose their jobs.

That's the Government, but what about businesses against which we must compete? Motor carriers have no mandatory labor protection payments. Neither does any other industry.

For example, when IBM, which has made billions over the decade before its more recent problems, wants to lay off workers, do they pay 6 years severance? No, their program affecting Vermont workers only paid up to six months severance. Even your Central Vermont Public Service Corporation, which competes with no one and has a guaranteed rate base, it paid no more than 1 year severance in recent layoffs.

So against these considerations, what is fair? We want to be treated like all other businesses. We recognize an obligation to those who have worked faithfully for this company, both management and labor, and we sincerely believe that the fairest thing is to find rail jobs with a viable, energetic new company that will run this railroad. If there aren't enough for those who want jobs, RailTex has a program to tie people over until openings are created on its affiliates or elsewhere within the industry. GTW has jobs available today in Detroit, and more hiring is anticipated. We have proposed to pay moving expenses for those hired. Finally, as we told the union representatives, we will contribute severance payments to ease the transition created by this change.

Thank you for permitting me to present our case.

Senator JEFFORDS. Mr. Flohr, please proceed.

Mr. FLOHR. Thank you, Senator Jeffords, for your committee holding this hearing. I have been a strong advocate of such hearings. A full copy of my presentation is on file with your committee and I will highlight some of the aspects of my testimony.

Emotional rhetoric surrounding this transaction has had a very popular appeal here, but fact must be the basis upon which our elected officials such as you and your committee as well as the appropriate approval agency will base their decision.

Only 4 weeks ago I appeared in this very same Parish Hall introducing RailTex to the City of St. Albans. It was the first time the 200-plus attendees learned about RailTex and our management philosophy. This was also the first time the current employees of the CV were introduced to the job continuation plan which will guarantee railroad employment to all current CV employees should they choose to participate.

The next morning we had a three-hour meeting with CV employees here in this very room, and we held similar town hall and employee meetings in Palmer and in Norwich.

When one removes the public agency representatives and ship-pers, the general public participation can only be categorized as minimal. Of those public parties in attendance, comments and

questions related only to one, noise pollution complaints; two, historic preservation of rail related facilities; three, continued conservation of abandoned rail rights-of-way for bike trails, and four, persons proposing that RailTex move the new CV headquarters and shop facilities out of St. Albans and into their community. On this latter point, it is my hope and intent that we will be able to preserve a maximum number of CV jobs here in St. Albans. In fact, I have been approached by a number of citizens in St. Albans who are privately supporting this sale and have expressed a strong desire that the headquarters remain here and that the locomotive shop remain open.

I believe there is a good opportunity to expand the operation of the car and locomotive shops, performing repairs on locomotives and equipment throughout the 23 RailTex subsidiary railroads. I currently see no physical or financial reason why the facility should not remain here.

Senator Jeffords, once the transaction is approved, I want to work with you, Senator Leahy and Congressman Sanders as well as the Mayor and Citizens of St. Albans to best assure the future operations. The fact that RailTex has 23 separate railroads and has a 38 percent a year compound growth rate in revenues and profits for the last 5 years makes us the acknowledged leader in the feeder railroad movement.

Our experience gained since we started our first railroad in 1984 gives us a keen insight on the conditions we find in lines we might acquire. Most typical is that the traffic levels are declining, employee levels are declining, the parent owner is focusing most of its capital dollar expenditures on main line improvements, lessening sales effort, of course safety record and a general deemphasize on commitments for long-term success of the line.

The key to a company to acquire a railroad like this is rebuilding the business and it is totally dependent on the current condition on the line. Rail service is vital to keep business alive because rail freight rates are lower than truck. If the traffic base is gone or is going, neither RailTex nor anyone else will step in and buy the line. Government purchase such as occurred in states here in New England is the only alternative to abandonment.

Where does CV fit into this analysis? You heard the testimony from Mr. Walker and I think that it fits in all those categories, but let me highlight one other thing and that is safety.

For the first 4 months of 1994, CV had a personal injury rate of 11.82 for 2,000 hours work. This compares to an industry average of 6.78 and for RailTex railroads for the first quarter of 1994, 5.92.

However, all is not bad. The track structure remains strong and safe for Amtrak and freight trains. We find the individual employees to be extremely professional in their knowledge and their actions. When working one-on-one with CV employees, we see their own sense of frustration that the line continues to lose business and jobs.

The nonrailroad public seems to have a similar opinion. However, no one is willing to speak in the open because of community peer pressure. In fact the public tells us they envy the pay level of current CV employees and the RailTex job continuation plan.



Our operating plan will provide the same freight services that CV offers today and Amtrak will offer exactly as it does today. On day one of start-up, we bring in our go team, qualified railroaders from our other RailTex carriers. They would stay on our new railroad only until permanent work force is hired, trained and qualified. The RailTex business plan calls for 78 positions necessary to run the railroad.

However, RailTex offers a job continuation plan unique among the final bidders. We believe it has never been before offered to employees affected by a line sale.

Key points of the job continuation plan contain the right of first hire to existing CV employees. For those whom we do not have positions immediately available and who do not accept the buyout severance package from CV, we will provide an opportunity of first hire to fill new vacancies on one of the 21 RailTex carriers in the United States with relocation allowance. As more positions open on the new railroad, these same persons would have first return rights.

While awaiting a vacancy, each would receive a partial pay to keep their current medical and dental fringe benefits and would be free to accept other temporary work.

Our wages will be 15 percent less than current base pay levels for each craft, but would include a profit-sharing program for seven percent of the operating profit of the railroad which is returned to the employees. This profit-sharing plan has averaged 15 percent of base pay on our other railroads. So I am optimistic that the new railroad employees will have a total compensation very close to that of their current pay and even higher if the business prospers.

Our fringe benefits are very similar to the current CV plan. We believe our right of first hire combined with our job continuation plan is both fair and actually very generous when compared to the fate of the employees recently laid off by IBM and those in St. Johnsbury Trucking who completely lost their jobs when the company between out of business.

We also have in our business plan money but not the people count to perform locomotive and cars being repaired, accounting functions and real estate management. Both the locomotive and car repair facilities and train personnel are in St. Albans today, and we can envision employing another 15 to 25 additional CV employees to work here. Yet in our May 31 Town Hall Meeting, a gentleman stated that St. Albans had granted certain tax concessions to the CV to keep the repair shop here. If a RailTex subsidiary fired the line, it would advocate those tax concessions be removed.

Do the other citizens of St. Albans also advocate increasing the new company's taxes? If so, recall that places like Palmer want us to relocate there. We also have many other places where we can build modern locomotive and car shops, many where tax incentives are available and industrial revenue bonds could fund construction.

It was brought up earlier about a Missouri Arkansas Railroad. I would like to cover that a little bit. That business plan called for 51 employees. 19 months later we are now up to 97 employees and we are seeking ten more. Mr. Garvey said that all of the affected employees at that railroad were out of work. It actually turns out that we hired all the track maintenance employees that were on

the Union Pacific Line and they are now working for us, and now in fact we have more people working on the Missouri Northern Arkansas than were working on that railroad than the Union Pacific last operated.

Because we will be establishing a new independent carrier to operate the CV assets, the transaction requires approval for exemption from the Interstate Commerce Commission under 10901. I know some critics have labeled this exemption a loophole, but that is not the case. In fact the class exemption was adopted by the ICC over 8 years ago by a public rulemaking proceeding, and it was later approved in the Federal courts.

Typically, the new carrier invoking 10901 exemption offers very little detail regarding the transaction. We do not plan on following that pattern. Included in our filing will be a complete description of the job continuation plan. In fact, in most cases, transactions under 10901 do not provide any guaranteed benefits to affected employees. By contrast, the RailTex plan does offer new benefits that are unprecedented in the history of new carrier start-ups.

Because of that, Senator Jeffords, I hope you and your committee will take this information and look at it as a new and fresh alternative to what has been discussed under the New York Dock.

Thank you very much.

[The prepared statement of Mr. Flohr follows:]

#### PREPARED STATEMENT OF BRUCE FLOHR

My name is Bruce Flohr. I am Chief Executive Officer and President of RailTex, Inc., a publicly traded stockholder company whose primary assets are a portfolio of 23 railroads, one of which operates 50 miles in Mexico and 2 which are in Canada. RailTex has been selected by Canadian National Railway to form a new railroad to purchase the core assets of the Central Vermont Railway ("CV").

First, let me thank you, Senator Jeffords and your Committee for holding this hearing. I have been a strong advocate for such hearings. Issues involving railroad matters seldom receive much public exposure. Therefore, any time the general public has an opportunity to learn more about the railroad industry, I believe we all become winners. With the other presenters you have asked to give testimony today, I am confident that the factual issues related to the sale of the CV can finally be made part of the public record. Emotional rhetoric surrounding this transaction has had a popular appeal here, but facts must be the basis upon which our elected officials, such as you and your Committee, as well as the appropriate approval agencies, base their decisions.

Personally, I began my railroad career in 1965 with Southern Pacific Railroad. Over the next 11 years, I moved 10 times, last serving as Division Superintendent of the San Antonio Division. At San Antonio, over a 4 year period, we moved the safety record from 9th, or last place, to 1st place. The last year Southern Pacific was the safest railroad in the U.S. In 1975 I became the deputy Administrator of the Federal Railroad Administration ("FRA"), and in January, 1977, the Acting Administrator of FRA for 6 months. On June 30, 1971, I resigned from the FRA, returned to San Antonio, and founded RailTex as a railcar leasing company. We acquired our first railroad in 1984, a second in 1986, and three more in 1987. We sold our car leasing business in 1989.

Only 4 weeks ago, on May 31, 1994, I appeared in this same Parish Hall introducing RailTex to the city of St. Albans. That town hall styled meeting last 3 hours and 10 minutes. From reports we have received, I believe everyone in attendance (approximately 200 persons) left the meeting feeling that everyone with a question or a comment was given an opportunity to speak. Many issues were raised, and opinions expressed. For most in attendance, it was the first time they learned about RailTex and our management philosophy. Also of significance, this was the first time the current employees of the CV were introduced to the Job Continuation Plan which will guarantee the opportunity for railroad employment to all current CV employees, should they choose to participate.

The next morning, in this same hall, we had a 3 hour meeting with CV employees. That night RailTex held similar town hall meetings in Palmer, MA, followed by an employee meeting there on Thursday morning. Thursday night we hosted a third town hall meeting in Norwich, CT.

Attendance at the employee meetings was excellent. However, when one removes public agency representatives and shippers, the "general public" participation can only be categorized as minimal. Of those public parties that attended, comments or questions related only to (1) noise pollution complaints by those living near railroad tracks, (2) historic preservation of rail related facilities, (3) preservation of abandoned rail rights-of-way for bike trails, and (4) persons proposing that RailTex move the New CV Headquarters and shop facilities out of St. Albans and into their communities.

On this latter point, it is my hope and my intent that we will be able to preserve the maximum number of CV jobs here in St. Albans. In fact, despite the initial public outcry, have been approached by a number of citizens in St. Albans who are privately supporting the sale and have expressed their strong desire that the headquarters remain here and that the locomotive shops remain open. As I will indicate later in this testimony, I believe there is a good opportunity to expand the operations at the car shops by performing repairs on locomotives and equipment from throughout the 23 subsidiary railroads of RailTex. I currently see no physical or financial reason why the facilities should not remain here. Senator Jeffords, once the transaction is approved I want to work with you, Senator Leahy and Congressman Sanders as well as the mayor and citizens of St. Albans to best assure the future operations.

Now, for the record, what is RailTex, Inc. It is a holding company with assets at the end of 1993 of \$112 million and long term debt of only \$29 million. For 1993 our revenue were \$59.8 million with after tax profits of \$3.6 million. A May 12, 1994 "Labor Strategies" publication stated that RailTex was in the 4 percent tax bracket. In fact, we paid \$2.5 million, close to 40 percent of our pretax net income in income taxes, as well as \$3.8 million in franchise and property taxes. Most of the property taxes involve taxation of our right-of-way, a tax our trucking competitors do not pay. All employees of our railroads pay into the Railroad Retirement Fund, as do our employees at our San Antonio headquarters. This Railroad Retirement pay subject has been another area of misinformation by those opposing the CV sale. I hope your Committee will investigate those charges. Public records at the Railroad Retirement Board will show the "nonpayment" allegation to be false. RailTex pays Railroad Retirement. The CV acquisition will be our second largest railroad in terms of miles, and second largest in employee count. It will be our highest priced acquisition.

RailTex has over 6 million shares of stock held in the public market. Being a publicly-traded stock Corporation requires our company to make detailed reports to the Securities and Exchange Commission, disclosing everything from the salaries we pay our key officers to details on our stock and debt holders. Again to correct misinformation, RailTex does not have any direct or indirect "cozy" arrangement with Canadian National Railway ("CN") or their subsidiaries. CN does not hold any of the RailTex debt, and CN does not guarantee any RailTex or subsidiary debt. CN is not a stockholder of RailTex.

RailTex has a full time staff of 4 persons in our acquisitions group whose sole purpose is to find railroad acquisition candidates. Where we see a strong base level of business, as well as upside potential, we then propose to buy the line. The fact that we have 23 separate railroads, and have a 38 percent per year compound annual growth rate of revenues and profits for the last 5 years makes us the acknowledged leader in the feeder railroad movement. Of that 38 percent per year growth, 5 percent comes from increased business on our existing railroads. The remainder of the growth is acquisition driven.

Our experience, gained since we started our first railroad in 1984, has given us a keen insight to the conditions we find when reviewing the economic and physical condition of lines we might acquire. Most typical of these findings is the following: (1) traffic levels are declining; (2) employee levels are declining; (3) the parent-owner is focusing most of its capital dollar expenditures on main line improvements, such as track, locomotives, and signal systems; (4) lessening sales effort; (5) a poor safety record; and (6) a general deemphasis on commitments for the long-term success of the line. The key to the success of a company such as ours to rebuild the business, depends totally on the current condition of the line. As shippers see the service deteriorate, car supply diminish, freight rates become non-competitive, and even the track structures decline, what should they do? What would you do? We find the shippers first switch more of their traffic from rail to truck. When a decision is made to expand the plant, truck load out facilities are expanded, not rail. We have had numerous experience where rail tracks are paved over. The worst event would



be for the plant to close. Rail service is vital to keep most business alive because rail freight rates are lower than truck, even though the speed and dependability of the service may not be as good as truck. If the base traffic is gone, or going, neither RailTex, nor anyone else will step in to buy the line. Government purchase, such as has occurred by the states here in New England, is the only alternative to abandonment. However, with government intervention, subsidies are usually required. I advocate the "private sector solution," but it is only possible if the line still has "life."

Where does the CV fit in this analysis? Revenues for 1993 on the CV were \$19.5 million, up less than 1 percent from 1992 and less than 1990 revenues of \$19.6 million. This stands in stark contrast with the rail industry, generally, which had record revenues in 1993. Employee count on the CV has dropped from over 400 in 1980 to 291 in 1986 to approximately 170 today. Over 234 jobs have been lost on the CV in the last 13 years. CV management stated in our public meetings that the 1993 profit of approximately \$800,000 came primarily from real estate transactions. The safety record is another indicator. For the first four months of 1994, the CV had a personal injury rate of 11.81 per 200,000 hours worked. This compares to an industry average in 1992 (the most recent data available) of 6.78. For rail carriers controlled by RailTex, the first quarter 1994 rate was 5.92. The CV does not have an enviable safety record.

However, all is not bad. The track structure remains strong, and safe for class III category operations of Amtrak and freight trains. As we send more of our people to St. Albans and along the railroad, we find the individual employees to be extremely professional in their knowledge and actions. It is very hard not to be sensitive to the emotion surrounding this sale, but when working one-on-one with the CV employees, we see their own sense of frustration that the line continues to lose business and jobs. The non-railroad public seems to have a similar opinion. However, no one seems willing to speak in the open because of "community peer pressure." I fully understand this, because I grew up in a town of 2,300 people in Northern Idaho. In fact, the public tells us they envy the current pay levels of CV employees, and the RailTex Job Continuation Plan.

Next, the Committee must have, for the record, certain details of our purchase proposal. RailTex has offered to buy the line for approximately \$40 million. Our operating plan will be to provide the same freight service as CV offers today. Amtrak will operate exactly as it does today. However, if this railroad is typical of our other start-ups, we would anticipate early increases in our service level. On Day 1 of start-up, we bring in our "GO team," qualified railroaders who have experience on other RailTex carriers. They would stay on the new railroad only until the permanent work force is hired, trained, and qualified. In Nova Scotia, where we started a new carrier in October, 1993, 45 of the 47 positions were filled by persons that had previously worked on the line. Our GO team went home on the third day after start-up. We do not bring in "outsiders" to run the new railroad. We hire locally.

We believe each of the Final Bids had a planned reduction in the work force. The RailTex business plan calls for 78 positions necessary to run the line. This compares to roughly 170 today. However, we have been told by CN that our proposal was unique because RailTex offered a Job Continuation Plan. Not only was it unique among the final bidders, but we believe it has never before been offered to employees affected by a line sale. Key points of the Job Continuation Plan include right of first hire to existing CV employees. For those for whom we do not have positions available immediately, and who do not accept a buy-out severance package from CV, we will provide an opportunity of first hire to fill new vacancies on one of the 21 RailTex carriers in the United States, with a relocation allowance. As more positions open on the new railroad, these same persons would have first return rights. While awaiting a vacancy each would receive a partial pay, keep their current medical and dental fringe benefits, and would be free to accept other temporary work. Our wages will be 15 percent less than the current base pay levels for each craft, but would include a profit sharing program where 7 percent of the operating profit of the railroad is returned to the employees. This profit sharing plan has averaged 15 percent of the base pay on our other railroads, so I am optimistic that the new railroad's employees will have total compensation very close to that of their current pay, and even higher if the business prospers. Our fringe benefits are very similar to the current CV plan. We believe our "right of first hire" combined with our Job Continuation Plan is both fair and actually very generous when compared to the fate of employees recently laid off here in St. Albans by IBM, and those at St. Johnsbury Trucking who completely lost their jobs when that company went out of business.

Although the base business plan calls for only 78 persons to run the railroad, we have money, but not people count, to perform locomotive and car heavy repair, accounting functions, and real estate management. Currently heavy repair work on



locomotives owned by RailTex and leased to individual carriers (now 129 units) and cars (now 699 cars) is performed at contract shops. There are both locomotive and car repair facilities and trained personnel in St. Albans today. We can envision employing between 15 and 25 more CV employees to work here. Yet, at our May 31, 1994 town hall meeting here, a gentleman spoke who represented himself as a former mayor of St. Albans. He stated that St. Albans had granted certain tax concessions to the CV to keep the repair shops here. If a RailTex subsidiary acquired the line, he would advocate those tax concessions be removed. Do the other citizens of St. Albans also advocate increasing the new company's taxes? If so, recall that places like Palmer, MA want us to relocate there. We also have many other places where we could build a modern locomotive and car shop, many where tax incentives are available and Industrial Revenue Bonds could fund construction.

RailTex believes there is significant new business potential on the railroad. CN has asked us to staff trains into Montreal. This would add 6 more train service persons, and maybe more. A major truckload carrier came to us requesting overnight intermodal service between Montreal and Long Island. Customers in the Palmer area and south see major business opportunities for the railroad. We believe the new carrier will grow in a manner similar to our Missouri & Northern Arkansas line. That railroad is 520 miles long, and had an initial business plan for 51 employees. Today, only 19 months after start-up, M&NA has 97 employees and is seeking 10 more.

Because we will be establishing a new, independent rail carrier to acquire and operate the CV's assets, the transaction requires the prior approval or exemption from the Interstate Commerce Commission under Section 10901 of the Interstate Commerce Act. In our case, the transaction is eligible for a class exemption to comply with this requirement, which is the course that we intend to follow. I know that some critics have labeled this exemption a "loophole," but that is not the case. In fact, the class exemption was adopted by the ICC over 8 years ago after a public rulemaking proceeding, and was later approved by the federal courts.

Typically, a new carrier invoking the 10901 exemption offers very little detail regarding its transaction. We not plan to follow this pattern, though. When we file with the ICC, we will explain fully the purpose of our acquisition, the benefits that will result to affected shippers and communities, and our plans for preserving rail service over the long term in Central Vermont.

Included in our filing will be a complete description of the Job Continuation Plan, a feature which also distinguishes our transaction from other new carrier acquisitions. In most cases, transactions handled under Section 10901 do not provide any guaranteed benefits to affected employees. By contrast, the RailTex Plan offers benefits that are unprecedented in the history of new carrier start-ups.

There are, of course, voices which will call for even more. For example, Congressman Sanders has introduced legislation that proposes labor protection conditions applicable to big railroad mergers for all sales transactions filed with the ICC under the Sec. 10901 process. I believe this would force the ICC to require the seller to pay 6 years wages to all employees who could be "adversely affected" by the sale. Such "labor protection" is already required on all merger and abandonment filings. I believe that if the legislation were passed, it would have a significant negative impact on the whole railroad industry, especially new proposals to preserve rail service on light density lines. Such conditions chill—if not kill—efforts to rebuild and resuscitate lines such as CV. Because this so-called New York Dock protection is mandatory for abandonments, we see marginal rail lines downgraded, with service going from daily to tri-weekly to weekly. Surcharges are assessed on the existing traffic. Track conditions deteriorate. Shippers leave. When abandonment authority is requested, most of the employees are already gone, so no one is there to be paid 6 years' wages. Everyone loses. Could this happen to the CV if the sale is denied or adversely affected by a 6 year wage penalty cost? No other industry is forced to pay such a penalty.

However, the introduction of the Sanders Bill is not all bad. The current process of ICC line sale approvals is not perfect. RailTex suffered a 14-month delay on a 35-mile linesale where New York Dock protection was offered by the seller, and no protests were filed in the comment period by shippers, employees, rail labor, or the public. Yet the ICC took 14 months to approve the sale. In the interim, the shippers and the track structure suffered. That is not correct either. There must be a better way to handle rail line sales to meet the needs of all interested parties. The Sanders Bill and this transaction have brought the rail line sales process directly into the public interest area. This hearing is a vital part of the process.

Thank you Senator Jeffords for arranging this hearing and allowing me to testify.

Senator JEFFORDS. Mr. Desrosiers, please proceed. I understand you are here as a shipper and user of the line, and as I said earlier, I think all of us are, number one, hope to keep the line alive, not making any decision on who runs it but it seems to me that is critical to me and probably critical to you, so I'd like to hear your view.

Mr. DESROSIERS. Thank you very much for having me. My name is Roger Desrosiers, I am the CEO of Northeast Warehousing and Distribution, Limited and we are located in Hudson, MA. I am also the former chairman of an ad hoc committee that was put together by the business persons that owned the various CV distribution centers along this line. Collectively we do represent the biggest shipper group located on the line and we are very, very concerned about the CV divestiture.

My reason for speaking today is to let not only management and labor but government officials know that there is a third point of view out here and you really need to hear us.

Most of the distribution centers that are served by the CV are small business entrepreneurs. Our sole purpose, the only reason we are here is because of CV's existence, because of that rail. We are located in New England, which I have become accustomed to referring to as the new Appalachia. A region which we know all too well is becoming a great tourist Mecca and increasingly poor manufacturing area. Our base is constantly eroding. We in business find that once it is gone, it could not come back.

I left my office Friday for a holiday only to face the Springfield Union News that announced down our way Digital to close West-field plant. 340 jobs lost as firm retreats from western Massachusetts.

Gentlemen, even our high tech companies are now leaving our area. Many of our DC's are start-up businesses and are less than 10 years old. To borrow a phrase, we started the old-fashioned way; we mortgaged our homes and our children and we put our families up for collateral. Our reason for being in business is to provide our customers the best reasonable distribution services we can give them.

Now please follow me closely because I think this is important that you know. Ten percent of our customers are locally based. The remaining ninety percent lay outside of the New England region. We are a gateway region for traffic destined to New York, New Jersey, Pennsylvania, Virginia, Maryland, and south.

In our group of eight distribution centers here on the CV we generate approximately 12,500 rail cars of products annually. We move this through two centers in Vermont, four in Massachusetts, and two in Connecticut. This traffic equates to 37,500 truck loads which results in employment of 805 persons weekly. These employment numbers do not include railroad crews nor the related businesses that support our own industries.

After surviving the depression of 1989, 1990 and 1991, we are now faced with a situation that is beyond our control and that situation is the CV divestiture. Without a strong and efficient railway operating this 325 miles of the CV, our businesses will close. The 805 people working with us will also be out of jobs.

Our position has always been as team players. We are here to support a strong and a viable railroad. Unfortunately, we had no

input into the determination as to who the final bidders would be. The decision was not ours to make either.

Ladies and gentlemen, it is apparent to us that the selection process has been made for us and as an independent businessman fighting for survival, I am here to support RailTex for negative reasons and positive reasons.

First of all, briefly my negative reasons, and I do not mean any derogatory statements, but in my own opinion, if the Sanders bill is passed, I feel it would kill this and any other possible sale of this property of the CV.

The current owners of CV, the Canadian National have strongly demonstrated that this property could not fit into their future plans. One way or another, within 5 years under current ownership our business volume will be nonexistent and we like Digital will see an abandonment of this rail service.

The New York State, Canadian Pacific, Delaware & Hudson, our competitors are watching these proceedings and they are watching them very closely, and I can assure you that they are very ready, willing and able to move in and take our business base. We do not think the Sanders bill is the solution to this situation.

A couple of positive reasons that I feel I would like to support RailTex. I see they are a strong business base. Can't argue with that. They are willing to invest \$40,000,000 for the privilege of operating this property. The management team has publicly acknowledged the desire to address the employment issues. It's the first time I have heard that a sale of this nature will go along with employment issues to be discussed.

And most importantly, I feel that they are offering us, the workers and the shippers, an opportunity to work, to work with incentive to promote employee profits and shippers growth.

In conclusion, they offer us future options and I do not believe that without them those options would be available. We ask that the government, business and labor invest in our region's future. Please, could not feather your own nests. Anything short of an investment in our region will doom our collective efforts to provide for our families and that is what it is all about, providing for our families.

Before I conclude, I would like to make sure that the shippers go on public record to thank the CV employees for a job well done. I know you had no input into the decision to sell your company, but please, we the shippers need your continued service and your support. We ask that you listen to all sides of the issue. The decision you are about to make is a very important one. You are not alone. We, the shippers are with you.

Thank you for hearing me.

Senator JEFFORDS. Thank you. That is a side that we had to hear from and I wanted you here to let us all know as to what could happen along the line if for some reason or other the sale is stopped, and I appreciate your being here.

Mr. DESROSIER. Thank you.

[Information supplied by Mr. Desrosiers follows:]



## IN SUPPORT OF RAILTEX FOR NEGATIVE AND POSITIVE REASONS

To whom it may concern, my name is Roger Desrosier, the CEO of Northeast Warehousing & Distribution, LTD., of Monson, MA. I'm also the former chairman of the Ad Hoc Committee of Business Persons that own and operate the various Distribution Centers currently being serviced by the Central Vermont Railway. Collectively, we are the biggest shippers group located on the line and we're the biggest shippers group located on the line and we're very concerned about the Central Vermont divestiture.

My reason for speaking today is to let management, labor, and government officials know that there is a third point of view that must be taken into consideration. Most of the distribution centers (the DC's) served by the CV are small business entrepreneurs that operate solely because of CV's existence. We are located in New England, which I refer to as "The New Appalachia". A region, which we know all too well, is becoming a great tourist mecca and an increasingly poor manufacturing area. Our base is constantly eroding. Once business is gone, it doesn't come back. See example of last Friday's, July 1, 1994 Springfield Union—News article, "Digital to close Westfield plant, 340 jobs lost as firm retreats from WMass". Even our high tech companies are leaving the area.

Many of our DC's are startup businesses less than 10 years old. To borrow a phrase—we started the old fashion way—we mortgaged our homes and pledged our families as collateral. Our reason for being in business is to provide the best possible, most reasonable distribution service to our customers. I ask that you follow me closely. Ten percent of our customers are locally based, the remaining 90 percent lie outside the New England States. We are a gateway region for traffic destined to New York, New Jersey, Pennsylvania, Virginia, Maryland, and south. Our group of 8 DC's, two in Vermont, four in Massachusetts, and two in Connecticut handle approximately 12,500 railcars of product annually. This traffic equates to 37,500 truck loads which results in the employment of 805 people weekly. These employment numbers do not include railway crews nor related local businesses that service our own industries.

After surviving the depression of 1989, 1990, and 1991, we are now faced with a situation that is beyond our control—the Central Vermont Divestiture! Without a strong efficient railroad operating the 325 miles of the CV track—our businesses will CLOSE. The 805 people working with us will also be out of jobs. Our position has always been as team players. We are here to support a strong and viable railroad. We had no input in determining who the final bidders would be—the decision was not ours to make. But, Ladies and Gentlemen, the selection process has been made for us. As an independent business, fighting for survival, I am here to support RailTex for negative and positive reasons.

#### Negative reason:

In my estimation, if the Sanders bill is passed, it will kill this and any other possible sale of this property. The current owners of the CV have strongly demonstrated that this property does not fit into their future plans. Within 5 years under the current ownership, our business volume will be non-existent and this property will be abandoned. Our New York State CP-DH competitors are watching these proceedings very closely and are ready, willing, and able to take our business. The Sanders bill is not the solution to this situation.

#### Positive reasons to support RailTex:

1. A strong business base.
  2. Is willing to invest \$40 million for the privilege of operating this property.
  3. The management team has publicly acknowledged a desire to address the employment issues at hand.
  4. And most importantly, they are offering us an opportunity to work. To work with incentives to promote employee profit sharing and shippers growth.
- They offer us future options, without them, those options don't exist. We ask that government, business, and labor invest in the region's future rather than feather their own nests. Anything short of this will doom our collective efforts to provide for our families.

We the shippers would like to thank the Central Vermont employees for a job well done. We know you had no input, either, in the decision to sell your company. But, PLEASE, we the shippers need your continued service and support. We ask that you listen to all sides of the issue. The decision you are about to make is a very important one. You're not alone—we the shippers are with you. Thank you.



# Springfield Union-News

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## Digital to close Westfield plant

### 340 jobs lost as firm retreats from WMass

By DEAN LUNT  
and MURREY JACOBSEN

Digital Equipment Corp. yesterday announced plans to close its Westfield manufacturing plant by March — putting 340 people out of work and completing the once-mighty computer maker's withdrawal from Western Massachusetts.

In the 1980s, the Maynard-based Digital employed nearly 3,000 people in Greater Springfield and provided an important source of middle-class manufacturing jobs at plants in Westfield, West Springfield, Enfield and Springfield.

West Springfield and Enfield operations were consolidated into Springfield and Westfield. The Springfield plant at Federal Square closed in 1993.

The Westfield facility, which makes metal casings, opened in 1970 and once employed as many 1,800 workers.

"The employees are sad," said Nikki Richardson, spokeswoman for Digital. "It is a very difficult day for them and a very difficult day for the company."

Many factors cited in computer giant's fall.  
Story on Page 19.

The first workers will be laid off in 60 days with the remaining operation phased out during the next nine months. In addition to the 340 full-time workers, another 50 temporary workers will lose their jobs.

The nation's second largest computer company, which still employs 92,000 people world-wide, once boasted it had never laid off an employee. But it has lost \$3 billion in the past three years and \$183 million in the first three months of 1994 after misfiring on strategic decisions and suffering during industry-wide turmoil.

Yesterday's move in Westfield comes as Digital desperately attempts to right itself through massive downsizing — another 20,000 layoffs company-wide in the next 12 to 18 months — and by spinning off all businesses that cannot offer the company a distinct competitive advantage.

The sprawling Westfield plant on Southampton

Continued on Page 8

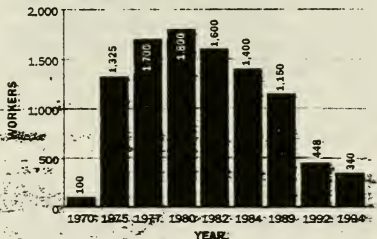


Staff photo by Michaela Leggett Brown

**DIGITAL CLOSING** — The Digital Equipment Corp. manufacturing plant on Southampton Road in Westfield will close in March, officials announced yesterday, putting 340 people out of work. The plant, which makes metal casings, once employed 1,800 people.

### Digital's rise and fall

Tracing employment figures at the Digital Equipment Corp. manufacturing plant in Westfield.



Union-News charts by Rob Chao

## Digital chronology

- **1957** - Digital Equipment Corp. founded by Kenneth Olsen.
- **1970** - opens Westfield plant.
- **1972** - opens Springfield plant.
- **1983** - opens Enfield plant.
- **Sept. 1989** - announces a voluntary severance program for Massachusetts workers.
- **July 1990** - reports its first loss, of \$257 million in its final FY 1990 quarter. Loss is blamed on a \$400 million writedown to pay for downsizing.
- **Nov. 1990** - announces plans to move one of two business units in the Westfield plant.
- **Jan. 1991** - announces it will eliminate 3,000 jobs by imposing the first layoffs in the company's history.
- **April 1991** - announces it will close the Enfield plant.
- **July 1991** - posts the first annual loss in its history for FY 1991, totaling \$617 million. DEC's fourth quarter loss of \$871 billion includes a \$1.1 billion writedown to cover restructuring. The company also announces another 2,000 layoffs to take place in the first quarter of FY 1992.
- **July 1992** - DEC announces an annual loss of \$2.8 billion for FY 1992 and a loss for the fourth quarter of FY 1992 of \$1.8 billion. Olsen resigns top post and leaves the company.
- **Oct. 1992** - Robert B. Palmer assumes DEC presidency and announces plans to step up cutbacks.
- **Oct. 29, 1992** - DEC announces plans to close Springfield plant.
- **May 1994** - announces plans to lay off as many as 20,800 of its 92,000 worldwide employees and to spin off some divisions.
- **June 30, 1994** - announces it will close its Westfield plant at a cost of 340 full-time and 50 temporary jobs, thus ending the company's Western Massachusetts presence.

## Workers stunned by news

By JoANN DILORENZO

**WESTFIELD** — When Digital Equipment Corp. Plant Manager Donald Bartholomew faced a solemn crowd of nearly 400 workers yesterday morning to announce the plant here would close, he not only shut down the careers of a workforce with an average tenure of more than 15 years with the company, he bid goodbye to his own job as well.



Bartholomew

The big difference is Bartholomew said he had seen the handwriting on the wall for months before he stood up to read his prepared speech, while rank-

and-file employees said they had been blind to the signs even after five years of cutbacks at Digital.

"They had us up for sale about a year ago, but nothing happened. In the end they couldn't even sell us," said Gerald Carriere, a 50-year-old Holyoke man who has been a sheet metal worker at the digital plant for 22 years. "I guess I felt like we were working on a day-to-day basis since they put the plant up for sale, but I can honestly say I had no idea this was happening till I came in to get my paycheck today."

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Senator JEFFORDS. Mr. Walker, you mentioned the Grand Trunk and that is a U.S. corporation; right?

Mr. WALKER. That's correct.

Senator JEFFORDS. So you do not have any questions that ICC has jurisdiction over you?

Mr. WALKER. No question. No question.

Senator JEFFORDS. Would you give me a little bit of enlightenment of how important Amtrak running up through the CV is? What does that do to your revenues? How important is the continuation of that run?

Mr. WALKER. The Amtrak contract which is the same with most railroads that operate Amtrak in fact operates over the railroads. The potential is a sharing of the maintenance of the railroad; we maintain it to standards which they share in and of course we get benefit from that as do they.

Second, the income over and above that comes from on time performance so it is based on performance measurement standards that Amtrak provided those carriers that meet their performance standards, and by the way, the CV over the years has in the high ninety percent in service performance.

Senator JEFFORDS. The discussion by the members representing the unions indicated that if you had accepted the P&W bid that things would all be okay. Why did you not accept it? I do not know whether you are free to answer that on your behalf but as an individual, if you could shed any light on that I'd appreciate it.

Mr. WALKER. Let me say that, Senator, there is no question that I feel very strongly that we had a very clear and unbiased bidding process. We had put out a set of bidding specifications, we provided it to any carrier that was interested, we advertised and we accepted all bidders to see if they could meet the specifications that we were asking for. We had—initially we had close to 100 interested parties and we went through the list and we brought it back down to about—I think it was around 14 or 16, and it came down to the shorter list. But every bidder had seen the requirements that we had put on the specifications for our bids and we selected them on that basis.

Senator JEFFORDS. The selection of RailTex then was based upon the amount of money only or what other considerations?

Mr. WALKER. It is a combination. Obviously, we were interested in the strength of the carrier, interested in the amount of cash, we were interested in the price, we were interested in how it was to be financed, and RailTex achieved high marks in all of those.

Senator JEFFORDS. The CV has considerable assets other than the operating assets of the railroad; is that right?

Mr. WALKER. I do not know if I understand your term "considerable". We have other nonoperating assets other than rail and track. Is that what you mean?

Senator JEFFORDS. Right.

Mr. WALKER. Yes, we do have some real estate, not a great deal compared to some railroads but we have some.

Senator JEFFORDS. Any ideas in evaluation in market value?

Mr. WALKER. Not that I could share with you right now, I do not have that information, but we have values at various times.

Senator JEFFORDS. You decided to sell it free of those assets; is that correct?

Mr. WALKER. That's correct. We are selling the rail operating assets.

Senator JEFFORDS. All right. Do you intend to liquidate those assets?

Mr. WALKER. We have no plans at the present time to liquidate those assets. They are—some of properties are leased properties, some have income, and depending on the situation at any given point in time, we may or may not sell it.

Senator JEFFORDS. RailTex is going to downsize significantly the work force. Why—and I would believe the figures would tell you that would make it turn from a marginal railroad to a fairly significant income railroad with that number of downsize.

Why you did not attempt to downsize? What are the barriers and why did you not take the approach of those businesses you mentioned, IBM, etc?

Mr. WALKER. Well, we are a common carrier, we operate under the rail labor laws and we have negotiated on a continuing basis with the existing rail representation over the years and we have been unsuccessful in getting an agreement with the brotherhoods and crafts who would achieve the level that you are talking of here. But more importantly, Senator, we have determined that strategically as a business enterprise the CV does not fit into our long-range plans and therefore, we feel it appropriate to invest the terms we get from the sale in other areas that will produce greater returns for us and fit our strategic network plan.

Senator JEFFORDS. I take it from that that it is your decision, one way or another, you are going to get right rid of the CV?

Mr. WALKER. As I said, Senator, it does not fit in our plans at the present time; that's correct. And we do not see any reason for that to change. As a major corridor on CN North American property, no, it does not fit in our plans.

Senator JEFFORDS. You mentioned that the option you would go with the Canadian Pacific, that the decision would probably be made to run up the other side of the lake. Why would that be?

Mr. WALKER. At the present time traffic—ConRail at the present time is favoring that route and they do not favor Palmer as an interchange and much of the traffic that has previously gone on ConRail at Palmer is now moving over the New York City route. So that has already occurred.

The second point that you are making regarding the merger if it should take place, and you must understand there is only discussion going on at the present time, but if it takes place, the D & H is part of the CV system, and one would have to assume that the D & H as part of that system would be favored as a part of that route.

Senator JEFFORDS. Congressman Sanders.

Mr. SANDERS. Mr. Walker, you write on page 1 of your testimony that the decade of 1980s was generally positive and profitable for most U. S. railroads, end of quote. I think you are aware there is an economic phenomenon currently taking place in America that those people on top are becoming wealthier and those people at the bottom are becoming poorer. When you say that the decade of the



1980s was profitable and positive for the railroads, people who owned the railroads, could you describe what the decade of the 1980's was to people who do the work on the railroads? Was it positive and profitable for them?

Mr. WALKER. Yes, I believe it was, Congressman. I think that with the Staggers Act the market, declining market share of the railroad industry finally turned around, we saw increases in market share, we saw increases in a slowing down of the downsizing of railroads, we saw an increase in technology where we provided much better services.

Mr. SANDERS. I think you misunderstood my question. My question was for the people who do the work on the railroads as opposed to the people who own the railroads, was this a profitable period, or is it fair to say that with companies like RailTex and others, the wages and working conditions of the workers went down considerably? Is that a fair statement, sir?

Mr. WALKER. On a national basis, I cannot say that is the case. I do not know about RailTex. [Laughter] I think that wages on a national basis have increased.

Mr. SANDERS. You think wages have increased. Do you think that the wages at RailTex have increased?

Mr. WALKER. I am not familiar with RailTex, Congressman.

Mr. SANDERS. You are selling your company to RailTex and you are not familiar with that company?

Mr. WALKER. I can only answer on the basis that RailTex has just testified they have an incentive program in place which indicates that with incentives that wages have pretty much kept with up with the industry level generally.

Mr. SANDERS. I am look at a document that was in fact prepared by the union, so this is not an unbiased source and they write that the survey of several RailTex Line acquisitions found that at least 250 jobs were eliminated by RailTex. If allowed to apply to Central Vermont, another 100 jobs would go.

Do you think that is a fair statement? Is that accurate or is that not?

Senator JEFFORDS. He said he cannot answer.

Mr. WALKER. I cannot comment.

Mr. SANDERS. But he is selling the company.

Let me ask another question. When you undertake a transaction like this and it's a two-way transaction—we have been focusing on rail but you are the people who are selling this.

Mr. WALKER. Right.

Mr. SANDERS. From a moral point of view, how do you deal with the problem or the issue of having people who have given 30 or 40 years of their lives to your company and then selling that company knowing that those people are going to be thrown out on the street? Does that aspect of human life and existence play any role in this transaction when you sit down and do this business?

Mr. WALKER. The welfare of all employees, both management and scheduled agreement employees are a big concern of ours.

Mr. SANDERS. They are?

Mr. WALKER. And in fact we have indicated our willingness and have sat down with—just recently, as a matter of fact within the last month with the crafts that are represented on CV and began

negotiations with them on a severance package that would be coupled with the RailTex package.

Mr. SANDERS. Well, if you are concerned about the people who have made your profits over the years that have done the work and maintained the lines, how much are you listening to their concerns about this particular transaction? How would it—would I be wrong in stating that there is almost unanimity of the workers at CV in opposition to this? How much are you listening to those voices?

Mr. WALKER. We try to listen to every one of them. We also understand that it's our obligation to and clearly to listen to their elected representatives as well, and we listen to them. In fact we sit down and negotiate with them and are willing to continue that process and if so indicated to them, their representatives. It is very difficult obviously to discuss the issue with every single employee; that is why we use the labor organizations as their representatives to negotiate with them.

Mr. SANDERS. And how have you been negotiating with the labor unions? Do you think you have been negotiating in a reasonable way, trying to reach settlement?

Mr. WALKER. I think we have. No question about that.

Mr. SANDERS. Senator Jeffords mentioned earlier some aspects of the transaction, potential transaction between Grand Trunk and RailTex, and you have mentioned that you have gone to what you consider to be a fair and open bidding process.

Will you make available to me the bids and allow the people of the State of Vermont to take a look at the bids that came in so that they can also make a judgment as to the relative merit of the bids?

Mr. WALKER. No, Representative Sanders. I do not think that is appropriate.

Mr. SANDERS. Then I am a little confused. I have heard speculation about this with the P&W, with that with the P&W, but to the best of my knowledge, there is no information that has been made public, so I would assume that everything that has been discussed today is pure speculation. I have not to the best of my knowledge seen any information about the bid made by the P&W.

Mr. SANDERS. Well I have heard discussion of the P&W bid here today and you are commenting on it yourself, and I suggest that perhaps you—I have had no word from the P&W regarding the process and I suggest perhaps you could talk with the P&W to determine whether they thought the process was fair or not.

Mr. SANDERS. Well the point that I am trying to make is either information was made available so that people can speculate in an intellectually honest way or else it's gossip. What you are telling me is you have made no information public about the bids that you have received; is that correct?

Mr. WALKER. As I said earlier, Congressman Sanders, I suggested to you that—I have no word from the P&W with whether they have any problem whatsoever with the process, so I suggest that you talk to them. I do not know.

Mr. SANDERS. But you will not make the bids public so that the people will have a better understanding of the process of what it was?

Mr. WALKER. P&W bids were provided to us in confidence and I would presume if they felt it should be made public, they would make it public.

Mr. SANDERS. Even if they did not, we could not compare it to other bids received.

Mr. WALKER. As I said, I think it is inappropriate for us to present for public scrutiny all of the bids that we received.

Mr. SANDERS. Thank you very much.

Senator JEFFORDS. Mr. Flohr, it's my understanding from Mr. Walker's testimony that they are sitting down and attempting to work out some aspects of severance negotiation. Are you aware of that? Are you working together on that?

Mr. FLOHR. I am aware that they are meeting with the representatives from the various labor unions. The only involvement we have had is still our oral commitment that we would do this job continuation plan as I have described in my testimony, but we are not participating in those negotiations with the CV.

Senator JEFFORDS. What I am trying to get is an understanding I got from the ICC of the responsibility here, and so if they are proceeding with the understanding that they have some responsibility as to the workers and that you are looking toward the future and how is that working?

Mr. FLOHR. Well, what we are doing is we acknowledge that there will be people that on day one of transition will not have immediate jobs available here on the railroad because there just isn't the work for them to do. And that is where we have proposed this stay at home, partial pay, full fringe benefits and then right of first hire on our other RailTex Railroads with also a relocation allowance, and then further if they wanted the right of first return as additional vacancies occur here on the CV.

Senator JEFFORDS. The number of employees that you are retaining, was that based upon the judgment of what you felt would be necessary to retain to run the railroad or was it anticipation of shifting workers up or how did you come to this figure of anticipated dismissals?

Mr. FLOHR. The number 78 that we came up with was derived by looking at the current level of train service offered on the railroad and plugging in what we saw were the number of people necessary to provide that current level of train service. So the Number 78 is what we feel is an absolute minimum necessary on a full-time basis to operate the railroad.

Senator JEFFORDS. I think your testimony was you might add to that, depending upon the circumstances?

Mr. FLOHR. That's correct. Such things as the locomotive repair shop, car repair area, some of the accounting and real estate functions. There is money in our business plan to perform that work, but we did not include any employee count to cover those tasks because those tasks could be relocated elsewhere.

Senator JEFFORDS. How important is Amtrak? Was your bid hoping or are you anticipating or is it critical that Amtrak continue running up the line?

Mr. FLOHR. We regard Amtrak as an important shipper on the railroad. They provide revenues, they provide incentive payments, so they are a very important revenue source for the railroad.

Senator JEFFORDS. Is it critical?

Mr. FLOHR. At the present time, yes, I believe it is critical that Amtrak stay on the railroad for us to have a successful and profitable operation.

Senator JEFFORDS. Congressman.

Mr. SANDERS. Thank you, Senator.

Let me begin, Mr. Flohr, by thanking you very much for coming and picking up on an issue that I mentioned earlier when the General Counsel of the ICC was here, and I wonder if you could help me with this.

Am I correct in understanding that Mrs. Heather Gradison is a member of the Board of Directors of RailTex?

Mr. FLOHR. Yes, she is.

Mr. SANDERS. Do you happen to recall when she first came to the board?

Mr. FLOHR. It was sometime after she left the Interstate Commerce Commission and I do not recall the exact time.

Mr. SANDERS. I believe it was 1990. Does that sound right?

Mr. FLOHR. I did not bring that information with me.

Mr. SANDERS. It was 1990.

Mr. FLOHR. When she came on the RailTex Board or when she left the ICC?

Mr. SANDERS. Both.

Mr. FLOHR. OK. OK. I cannot testify when she joined RailTex because I just do not remember.

Mr. SANDERS. Let me ask you a question that interests me very much. You know in America, I suspect in Vermont, in St. Albans, there is a growing cynicism about the way the United States government does work, there is a feeling that the United States government no longer represents ordinary working people but is dominated by big money interests. Now I wonder if you can help the people, help me and maybe the people of St. Albans in allaying some of this cynicism and telling us about the propriety of a woman who is chairperson of the ICC who in fact time after time allowed transactions to take place through 10901 which made your company millions of dollars in profit, and then immediately after she left the chairpersonship of the ICC suddenly ends up on the Board of Directors of RailTex. Now some people might think that this is undue influence of big money on government. Could you help us out and explain why that is not the case?

Mr. FLOHR. Well, first of all, prior to the time that Mrs. Gradison came on the Board of RailTex, she had absolutely no direct involvement with RailTex; there were no stockholder ties, there was nothing in her time with Interstate Commerce Commission or—

Mr. SANDERS. That would have been illegal. She would have gone to jail if that was the case and you would have gone with her.

Mr. FLOHR. I cannot say whether she would have gone to jail, but it would have been illegal.

Mr. SANDERS. It would have been illegal. So what you are saying is you do not commit an overtly illegal act and I believe that that is true, but you still haven't answered my question.

The American people believe increasingly that ordinary citizens have very little representation in government. The chairperson who time after time bent over backwards for the railroads as soon as



she left ends up on your Board of Directors. Tell the people of St. Albans why they shouldn't believe they are playing up against a stacked deck, that your side has all the power and is able to influence government?

Senator JEFFORDS. As I understand she's no longer on the ICC. Is that correct?

Mr. FLOHR. That's correct.

Mr. SANDERS. Of course she's not; that would be illegal. But the day after she left, she ended up on the RailTex Board, so that is my point. Can you help us out to understand that transaction so that these people think that ordinary people have power in Washington, and not just big money? Help me out on that one.

Mr. FLOHR. Are you saying that she is influencing the ICC?

Mr. SANDERS. I am saying that I think it stinks that somebody who is the chairperson of the ICC [laughter and applause] thinks it's OK—

Senator JEFFORDS. I understand your emotions, but this is officially a United States hearing and we are not allowed to have anyone applaud or cheer or anything else. These witnesses are here to be listened to; they are not to have to be exposed to emotional reactions like that. I thank you for your indulgence. Now please continue.

Mr. SANDERS. Thank you. You did not answer my question. Explain to the people that are sitting here, their lives and their jobs are on the line and the former chairperson is now on your Board of Directors. Tell them why they should not be extremely cynical about the world that you and your big money friends play in the whole political process. Tell them.

Mr. FLOHR. Thank you, Representative Sanders.

First of all, I am very proud to have a woman on the Board of Directors of a publicly-traded company in the United States. Regrettably, very few companies include any women on the Board of Directors.

Mr. SANDERS. You do not think that there are other women who could hold that position who aren't former chairpersons of the ICC? We know many very fine and talented women.

Mr. FLOHR. Can I have the pleasure of answering the Congressman's question?

Senator JEFFORDS. Congressman, let the witness answer, please.

Mr. SANDERS. Yes.

Mr. FLOHR. Second, when you have a company that is in the business that we are in, you want to have directors that are knowledgeable within the railroad industry. Regrettably in the railroad industry there are very, very few women in the any kind of management position or positions that understand some of the national issues involved with the railroad industry. Mrs. Gradison was one of those people that does understand those issues and that was another reason she was asked to become a member of our board of directors.

Mr. SANDERS. So what I am understanding you to say is you were just out there trying to look for a woman, trying to open up the board for women—

Senator JEFFORDS. Please. Let's dispense with that now. He has answered the question.

Mr. SANDERS. Unsatisfactorily I would add.

Senator JEFFORDS. OK. You can add a comment on that, but let's not try to go beyond what is reasonable here.

Mr. SANDERS. I do. I do. I look forward to this.

Mr. Flohr, am I correct in understanding that you are the Chairman of the Regional Railroads of America?

Mr. FLOHR. I am.

Mr. SANDERS. Am I correct in understanding that RailTex has acquired 23 rail lines?

Mr. FLOHR. Yes.

Mr. SANDERS. Am I correct in understanding that RailTex stock is traded on NASDAQ as a rail company?

Mr. FLOHR. It's traded on NASDAQ; it's not a rail company.

Mr. SANDERS. Given the fact that you are the Chairman of the Regional Railroads of America and given the fact that RailTex acquired 23 rail lines, could you please explain to the people of St. Albans why in the 10901 process RailTex poses as a nonrailroad company?

Mr. FLOHR. First all, Congressman Sanders, RailTex does not have any common carrier authority to operate any railroad in any part of North America. RailTex is a holding company where the primary assets of the holding company are individual railroads. And those subsidiaries that operate rail service have received common carrier authority by the Interstate Commerce Commission to operate railroads.

Mr. SANDERS. You are not suggesting that RailTex could not have influence over these 23 companies, are you?

Mr. FLOHR. No.

Mr. SANDERS. You in fact have influence over all these 23 companies: is that correct?

Mr. FLOHR. Yes.

Mr. SANDERS. Now some of us are not lawyers, so we have a hard time understanding. You just told us that RailTex has total influence over 23 separate railroads and yet when you go before the ICC, you tell them that you are not a railroad company.

Mr. FLOHR. We do not go before the ICC, Representative Sanders. A newly formed company goes to the Interstate Commerce Commission.

Mr. SANDERS. I see. I did not understand that. And where does the money come from for this newly formed company?

Mr. FLOHR. From a combination of debt and equity.

Mr. SANDERS. And who puts that whole transaction together? Is it not RailTex?

Mr. FLOHR. It is.

Mr. SANDERS. Well I think—I do not want to pursue this any longer. Just explain to the people here, this is in fact—you can believe this, this is what the ICC has done and allowed to happen for the last 10 years.

Let me ask you another question. You are aware, I am sure, that there has been significant community opposition to the sale of the Central Vermont to RailTex. You are aware of that, I am sure?

Mr. FLOHR. I am aware that there has been significant employee opposition, but I am not aware that there has been significant community opposition.

Mr. SANDERS. I thought we had the Mayor here. Did you hear the Mayor?

Mr. FLOHR. Yes.

Mr. SANDERS. I presume he was democratically elected by the people. He voiced his feelings.

We had a rally down here, we had many, many hundreds of people coming out. I think it is fair to say that there is significant community opposition.

You are aware that all three members of the Vermont Congressional delegation, that is all we have is three, are all on board legislation which would eliminate the 10901 loophole. You are aware of that?

Mr. FLOHR. No.

Mr. SANDERS. Well, let me inform you that is the case. Senator Leahy, Senator Jeffords and I are all on board that legislation.

Given the fact that at least a hundred employees will be displaced, that displaced workers will not have adequate severance pay, that we are meeting all kinds of community opposition, do not you think it might be appropriate to reconsider the purchase of the CV?

Mr. FLOHR. No.

Mr. SANDERS. How many of RailTex's 23 rail lines have unions?

Mr. FLOHR. One.

Mr. SANDERS. How many used to have unions?

Mr. FLOHR. All.

Mr. SANDERS. Now I'd like to ask you another question. Am I correct in understanding that RailTex's revenues increased from 52 percent from 1992 to 1993 to 59 percent, and you reported 3.6 million dollars in profits?

Mr. FLOHR. Yes.

Mr. SANDERS. I am looking at your prospectus dated November 18, 1993. Let me just read a little bit from it.

Help me out here, we have heard discussion about fairness; we have heard great concern about the cost of severance pay and so forth and so on.

How much money do you make, Mr. Flohr?

Mr. FLOHR. My 1993 wages were approximately \$165,000.

Mr. SANDERS. The prospectus says 1992 salary, \$182,000.

Mr. FLOHR. That is with bonuses on top of my regular salary.

Mr. SANDERS. Then it says bonuses, \$62,800.

Mr. FLOHR. I believe that is 1992 rather than 1993.

Mr. SANDERS. I think that's correct. That's correct.

Mr. FLOHR. OK.

Mr. SANDERS. How many shares do you own in RailTex?

Mr. FLOHR. Approximately ten percent.

Mr. SANDERS. You yourself own 10 percent?

Mr. FLOHR. That is how I answered and that's correct.

Mr. SANDERS. OK. How many shares are there?

Mr. FLOHR. Roughly 600,000 shares.

Mr. SANDERS. 600,000 shares. What did you say?

Mr. FLOHR. 600,000 shares.

Mr. SANDERS. The answer was 600,000 shares.

Senator JEFFORDS. Is that outstanding or is that on your own?

Mr. FLOHR. That I own.

Mr. SANDERS. Would it be fair to say that therefore for every worker who is laid off and thrown out on the street, every downsizing that takes place, your profits personally increase?

Mr. FLOHR. No.

Mr. SANDERS. Not fair to say?

Mr. FLOHR. No.

Mr. SANDERS. You own 600,000 stocks; the more profit the company makes, I would imagine the more profit goes into your pocket. Am I missing something here?

Mr. FLOHR. Yes. If you read further in that prospectus there is a statement that the company does not at the present time or in the future intend to pay any kind of dividend from profits of the operation, and that is the only kind that I would personally get those kinds of profits is if dividends were paid and they are not being paid.

Mr. SANDERS. But as the profitability and the wealth of the company increases, you become a wealthier person?

Mr. FLOHR. Correct.

Mr. SANDERS. Just out of curiosity, I do not often get the opportunity so it is nice to have it here, we have heard discussion about fairness.

Fairness. Tell me about fairness within the context of you making \$180,000 in salary, 60,000 in bonus, owning 600,000 shares, becoming wealthier every time the profitability of the company increases; people who have worked for your company—not your company but have worked for the Central Vermont get thrown out on the street; talk about that in the context of fairness.

Mr. FLOHR. Congressman Sanders, I did not come here for a personal character assassination. As I answer these questions, I hope that it's taken in the spirit of truly an investment in committed action that will lead to meaningful decisions by the committee.

I started RailTex with \$50,000 cash, stock that I obtained from Southwestern Airline stock that I sold. I hocked my family literally to start this company back in 1977, and I am extremely proud of the fact that the entrepreneurial spirit in American today is allowed to function, and I took that \$50,000 and have made it into the kind of stock holdings and benefits that you have described, and I am proud of it and I am proud of a country that allows something like that to happen when people do have the initiative to go out and do what is right.

Mr. SANDERS. We are all proud to be Americans, but some people here tell me about the process that takes place and what the entrepreneurial spirit means in this instance when you are making your money by firing your workers and disrupting and destroying families. Explain that to me.

Mr. FLOHR. First of all, we are not firing any workers.

Mr. SANDERS. You are not firing any workers?

Mr. FLOHR. I have testified consistently, including in your office the day that the sale occurred that we are providing employment for these people, partially paid full benefits, and right of first hire on our other railroads.

Mr. SANDERS. Let's deal with that one. Maybe I missed something. I would like to finish this line of questioning, Senator.



Senator JEFFORDS. Well, I wish you would hurry. You were kind of going a little bit further than the normal under the Senate rules.

Mr. SANDERS. These are the people whose lives are being affected.

Senator JEFFORDS. Well, these people would want to testify and I think you made your point. I do not see any sense in making all these comments.

Mr. SANDERS. Well, he just indicated, I just heard him indicate that you are not going to fire any workers? Is that what you just said?

Mr. FLOHR. Yes.

Mr. SANDERS. I thought that your modus operandi around the country and here was to fire all workers and rehire some of them at lower wages and give an opportunity perhaps to those who wanted to stay on moving to other parts of the country. Did I understand?

Mr. FLOHR. When we start a railroad it is a new company, we hire people to run the trains and provide the train service. We have offered to hire 100 percent of the existing CV employees, 78 of which would return to train service immediately and the remainder would go on this job continuation plan.

Mr. SANDERS. You are going to hire all of them; no one is going to lose a day's pay?

Mr. FLOHR. I have testified about our job continuation program in my testimony and I see no point in repeating that again.

Mr. SANDERS. Where is your nearest railroad that some of these people might be forced to relocate to?

Mr. FLOHR. The nearest railroad here would be three that are along the Virginia/North Carolina border and three in Michigan and one in Indiana.

Mr. SANDERS. Let me conclude and I thank you, Senator, if I went on too long. And I do not mean to be rude because I appreciate very much your coming here. I think you understood how people felt and I applaud you for coming here.

There is a trend in America today, and I think Mr. Desrosier made some reference to it when he talked about the deindustrialization of America, the decline of our manufacturing base, the fact that millions of jobs in America have been taken to third world countries and so forth, I would respectfully say and I do not mean to be rude about this, but the process you have undertaken which has disrupted so many lives, which has disrupted the standard of living for so many workers is part of the trend, which if allowed to continue in this country, is going to make us into a third world economy, and I certainly hopes that it stops.

Thank you very much.

Senator JEFFORDS. I take an opposing view on that. I think you are picking on the wrong parties here, Congressman. I find in examining these facts that the offer that has been made by RailTex under the circumstances may be the best deal for not only the railroad as an existing and continuing operation, which is my number one goal. It remains to be seen. I think it's premature to make accusations about what is going to happen to the employees until such time as you have seen the result of the bargaining with the Canadian National, the Grand Trunk and see what is going to be

offered them, and also you see and Mr. Flohr has articulated what they anticipate doing. So if the goal is to keep the railroad working, we try to do the best we can for the employees and I think it premature to make those conclusions, but that is only my personal view.

Mr. SANDERS. I strongly disagree with you, Senator.

Senator JEFFORDS. I respect your feelings, but I strongly believe in the American free enterprise system.

Mr. Desrosiers, you represent the people who are shipping on the line. You know that there is a possibility of going out of business in that case. How did you come here? Have you talked to other shippers?

Mr. DESROSIER. That's correct. We had some concern about a year ago and it was made semi-public that the CV divestiture was going to take place. We felt rather than sit back and allow the present owner to be in the dark as to what our feelings were, we did form an ad hoc group and we went to Montreal and voiced our opinion regarding the CV.

Obviously, we are like the tail that is being wagged by the dog, we are a captured audience. Without this rail services we are not in existence, so we have no choice. We are fighting for our very survival.

Senator JEFFORDS. Thank you very much. Congressman?

Mr. SANDERS. No questions. Thank you.

Senator JEFFORDS. We now have six people who would like to testify. I have to leave here at 7:15, so that would give us about 6 minutes apiece, that is even more than I gave the other witnesses. So if Jay Denault and Ernie Phillips and Daniel Meub and Tom Bushey and Peter C. Martin and Robert Martin would come forward, please move up to the front of the room so we can take as little time as possible and we can go down through the list I made.

Jay, you go right ahead and then followed by Ernie, and then Dan and Tom and Peter and Robert.

Mr. DENAULT. Thank you, Senator Jeffords.

Senator JEFFORDS. For the record, give your name and where you are from and whether or not you are an employee of CV so this will all be in the record, because I want your testimony to be available.

#### STATEMENT OF JAY DENAULT, LOCAL CHAIRMAN, CAR INSPECTORS UNION

Mr. DENAULT. Thank you, Senator Jeffords. I have been employed by the Central Vermont Railroad since 1987. I am a car inspector, and I am the local chair for the union that represents those car inspectors.

We have heard a lot of testimony tonight on both sides, and I would like to tell you how I would think the highly concluded job continuation program will play out.

My roots of the railroad go back many years. My father is a retired engineer, my grandfather also worked for the railroad, so my legacy is pretty well embedded in this area and not something I'd be willing to give up easily.

The scenario of the job continuation program would be one such as this: On any one given moment, let's say that I lose my job,

what faces me is the distinct possibility I may have to uproot my family and move them to somewhere else in the country. That reality would force me to consider certain financial obligations.

I currently have a mortgage on my home that probably has about \$20,000 left on it. My total indebtedness would be about \$30,000, so the best that I could hope for in these hard economic times would maybe a cash sale or some kind of agreement through this job continuation program that would net me about \$80,000. If that were the case after I finish paying any kind of tax liabilities that I may have, I'd be lucky if I clear \$70,000 and that would be a high estimate.

After that I would then have to pay off what mortgages I have and outstanding bills which would leave me approximately \$40,000 at best. I would then venture to wherever it was that Mr. Flohr provided me with a job and would have to at least look at a mortgage of at least \$40,000 more to replace in kind based on the fact that if I were to look for a home to replace what I had which is very modest, to say the least, I would be there looking at going into debt for twice the amount that I owe now.

In addition to that, I am sure that Mr. Flohr's wages are not the current wages I receive now, and I would be subject to the first lay-off that happened. And this is business, this is the job continuation program that I would be facing and my family would be facing, not the least to mention uprooting my family and the hardship associated with that.

Enough, you have heard enough of that type of testimony tonight and I am sure you understand those issues that we face. And there are many more hardships.

It is important and I needed to bring it up and I covered this with Mr. Flohr in the meeting that he had with us earlier.

It focuses on the issue of the merger of the CN and CP, noting that the CP owns the Delaware & Hudson and CN owns the Central Vermont Railroad. It has been my opinion for quite some time that in the broader scope of things what we are looking at is the amalgamation of two giant railroads of which the Grand Trunk Corporation which Mr. Walker is a part of. Noting that RailTex was the corporation that acquired Cape Breton & Nova Scotia Railroad it might be important for you to know the source of that situation.

During that period of time they faced many of the same things we are facing here. However, some of the employees on the Cape Breton & Nova Scotia were employed by RailTex. But the important thing to note here is the fact that the business plan of RailTex had the Cape Breton & Nova Scotia replaced in the public record in New York, and under what we would consider the Freedom of Information Act the unions were able to secure that information.

The information included the words marked confidential on the tops of sheets of paper; therefore, the Minister of Transport was very concerned and asked for the information back. The unions complied, giving him copies of the information they had.

In addition to this when it was discovered that in fact it was RailTex's business plan, they asked for the unions to return the information. The unions refused, asking the then Minister of Transport what they had typed. The end result is that there was a court

order imposed on the people of the region; no less than 13,000 members of organized labor, a gag order not allowing them to speak about what they had seen, or to copy it or disclose it in any form, so RailTex continues.

We were tiptoeing around the financial aspects of RailTex's acquisition of the CV that Bernie alluded to earlier. The fact of the matter is that the Bank of Canada, I believe it is called, is one of the principal investors behind the acquisition of CV on behalf of RailTex. That was reported in the Boston Globe & Mail and I can provide you with those documents and they can be put into the record, if necessary.

The fact of the matter is that what you are looking at is you are looking at a merger. You are looking at a merger that is described in such a way in the country that it would provide the employees to be treated in a fair way. If that means that we start that process by requesting or hoping the ICC will impose New York Dock's protection, at least let us have that as the beginning of the bargaining process. All we ask is we have a chance to represent ourselves to the ICC and put our trust in our government to do what is right for us, the citizens and members of United States.

I will let it go at that.

Senator JEFFORDS. Thank you. That is helpful information. I appreciate it.

Ernie? Pull the microphone over and give us your name and where you live and where you are employed or whether you are employed by CV if you want.

#### **STATEMENT OF ERNEST PHILLIPS, GENERAL CHAIRMAN, UNITED TRANSPORTATION UNION**

Mr. PHILLIPS. My name is Ernest Phillips. I am the General Chairman of the United Transportation Union and I have had that job for the last 15 years. I have 38 years in the rail industry. I am not an employee of the Central Vermont; however, I represent employees in track and engine service.

First, I want to thank you for allowing me to speak here today and I am not going to reiterate what has already been said except to say that the CV is not a candidate for 10901. That should not apply and hopefully, the government and the ICC will not let that apply.

You spoke generally to somebody and I cannot remember who, I think it was Mr. Garvey, would they feel comfortable in letting the ICC have its discretion in applying protection?

Let me tell you that I also represent the employees on the Springfield Terminal Railroad, the Guilford Transportation Industries, 4,000 employees strong, there might be a thousand left today. Their division was left to the Interstate Commerce Commission under Mrs. Gradison.

Senator JEFFORDS. When was that?

Mr. PHILLIPS. In 1987, August 16th of 1987, they ruined the Maine Central Railroad, the Boston & Maine Railroad and the Delaware & Hudson went into bankruptcy under Mrs. Gradison's chairmanship of the Interstate Commerce Commission and her liberal dealings.



Let me say that maybe 20 percent of the people have collected some protection; 80 percent have been put on the street, have had no protection whatever. So it's very important Congressman Sanders' bill get passed and Senator Jeffords' bill get passed. It will be a start of the employees in the rail industry to at least have something, and that could not mean 6 year's protection at whatever those wages are; it means that they have 6 year's protection but the object is to give them jobs.

The offsets of the money that they earn is deducted from their labor protection, so therefore they do not get just 6 year's salary for sitting home. A New York Dock agreement has to be negotiated if New York Dock's conditions are imposed.

That is where the SD employees were raped because it was in the CEDO conditions that were imposed and there was no implementing agreement, you just took what they gave you. That is why it is very important that New York Dock conditions should be imposed in this transaction.

There were several statements made with regard to the profits of the Providence & Wooster Railroad. I have no factual knowledge of the \$30 million bid except what I have read in the paper; however, I do have knowledge that they would have hired all 178 employees and that they would accept the New York Dock protective conditions and that is fact. That's a lot of difference between what was offered under the job continuation program that RailTex has offered.

That job continuation program, the first right of hire, and they would pick and choose, not a seniority but pick and choose the 78 employees they want, then they would put the rest on a so-called spare board with continuation of some partial payment, what payment we do not know, and a level of some kind of fringe benefits to what we do not know, and the reason the rest would all go home.

Now they speak about the negotiations. You are absolutely correct, they took us out to Detroit, Michigan on June 16th, supposed to be negotiations on outstanding Section 6 Notices served in 1988, the range of wage increases. That was not discussed at all. They did not want to discuss that. What they did offer was Hey, we will give you ten hundred dollars, maybe fifteen hundred dollars, no more for the 78 people that we agreed on that RailTex agrees to hire. We will give you \$5,000 apiece for the other people that we put on the so-called spare board. And for the undesirables that we do not want, we will give you a graduated salary up to a maximum of \$25,000 for 30 years service, 25 years service.

If you call that dealing in fairness, then God help us all, because the employees here are not going to get anything. That is so ridiculous, it wasn't even—there wasn't anything to be considered fair about it at all.

Maybe I am wrong today, but I have got to tell you, CV Rail is not bargaining in good faith, Grand Trunk Corporation is not bargaining in good faith, Canadian National of North America is not bargaining in good faith.

And at that meeting I brought out the fact that there was a labor relations officer who kept saying, I am speaking for the CV management. That's bull crap. He was speaking for CV management

and the Grand Trunk Corporation and CN North America. He was trying to limit the liability of CN North America.

I see the light on.

Senator JEFFORDS. That's all right. Go ahead.

Mr. PHILLIPS. The fact of the matter is they are not bargaining in good faith, they have not been bargaining in good faith.

Senator JEFFORDS. Have you met since that time?

Mr. PHILLIPS. No, we have not. I have received a notice from the National Mediation Board, negotiations are recessed indefinitely.

I have since talked to the International, and we are sending them a letter asking them to set up some other dates that we want to meet and we want to discuss this because that offer is completely unacceptable; the way they are doing business is completely unacceptable, and the only alternative we have right now is putting ourselves in your hands and asking that we get—

Senator JEFFORDS. Do you intend to make a counteroffer or have you laid anything on the table?

Mr. PHILLIPS. That is not for us to lay on the table. We have offers out there, trying to settle our outstanding Section 6 notices for wages that they owe us for the last 4 years, and until they settle them in good faith, how could we possibly put another offer on the table? The only hope that we can bring them to the negotiating table would be by the passage HR-3866 and the Senate companion bill.

Senator JEFFORDS. Keep me advised, will you, on whether you get any more notices or any negotiations?

Mr. PHILLIPS. We'll be glad to.

Senator JEFFORDS. Next, please.

#### STATEMENT OF PETER MARTIN, CITIZEN, ST. ALBANS, VT

Mr. MARTIN. Peter Martin. I am not a member of the railroad, never worked for the railroad, but I know a lot of the people who do work for the railroad.

Senator JEFFORDS. Right. You go ahead.

Mr. MARTIN. At the last meeting we had up here at St. Mary's there were a lot of unanswered questions today as we had then. Particularly one of my questions was what happens to the people that are offered—that were on partial pay and were offered another job somewhere else? How long are they going to hold them on that? Is it the first opportunity to move, if they refuse it does that end their obligation or what?

I think that is very important for the ICC to look into and keep track of. I can put 25 people aside and offer them a job tomorrow in Indiana or somewhere else in the country, and if they all refuse and that ends my obligation, then I think that would be very unfair to the people we are trying to represent here who do a fairly good job.

Again, I want to thank you, Senator, for having the hearing here and allowing us to testify. My only hope was that maybe a lot more of the hearings on the ICC can be held here in this community so we can keep a closer watch on what is going on.

It disturbs me greatly that if somebody puts in a bid for a company that they cannot reveal what that bid is. To me, we have offered bids in St. Albans Town and in the community here for jobs

to be done and when those bids come in, they are public property within 5 days, so why shouldn't that same rule allow for the others to be open to the public? I do not think that is quite right, Senator.

Thank you for your time.

Senator JEFFORDS. Thank you for your time.

And go right ahead. You are Dan, are you?

Mr. MARQUETTE. No. I am speaking a little out of turn. I am Robert Marquette.

Senator JEFFORDS. Go right ahead.

### STATEMENT OF ROBERT MARQUETTE

Mr. MARQUETTE. Basically what I want to touch upon is the fairness of the CN North America Corporation toward the CN employees over the last several years. My understanding right now, the Winnipeg & Pacific, the Grand Trunk Western and the CN itself are operating under current labor contracts. The CV of course lags behind, as usual. We are four or 5 years behind now; we have signed one contract in the last ten or twelve years. We are always the black sheep of the family it seems; we are always put to one side.

Mr. Walker when he was here back on October 29, 1993 to explain the ESOP plan to us, the question was brought up what would be kind of a severance package because they were going to lay off at least 40 people at the time. Then he said, No buyout is going to be offered; no railroad protection will be imposed. If another railroad purchases the CV, labor protection will have to be imposed.

We have employees here with well over 20 years on this railroad, and we ask kept asking him the question, what about their protection? What are you going to give them for giving their life, 20, 30, 40 years of their life to this railroad?

And he came back, I think it was Christopher Burger who came back, if anybody is unhappy with this ESOP plan at the time and wants to leave, they can do so. We do not want any employees to stay if they do not want to. Mr. Walker spoke up and said, We will not be offering any buyouts to anyone.

We have got employees that are on early retirement plans now, we have some that are off on sick leave that they are paying a certain percentage to these employees. What is going to happen to them with this sale? That is not touched on very often.

At this ESOP meeting they said, oh they will honor those contracts.

OK. So in other words, they want to pick and choose which contracts they are going to honor. Labor protection, no. Little ones over here, sure, no problem.

The DWP Railroad along with the CV 5 years ago, 3 years ago were going to be integrated, all the work was going to be sent to Detroit. They sat down and they got an implementing agreement with the Winnipeg & Pacific which is still a part of CN North America, as are we. They agreed to pay these affected employees that were losing their jobs 75 percent of their pay until they retired. They turned around to the CV workers and said, Nah, we do not feel like it. All these other railroads that they own are being treated, they have been given severance packages up to 60, \$70,000

they have offered to buy out these people. CV? No. No. No. Not applicable.

Why are we not a part of CN North America along with everybody else? No. We are the black sheep. And this is why people are getting so upset with the corporation itself.

What did Vermonters do? Mr. Desrosiers, I agree with him 110 percent. We want to service our customers, we give them darned good service and we do not want any shipper to go out of business, we do not want this railroad to go out of business. This is our livelihood, and we are darned good at it. I think it is about time that someone looked at us and said Thank you very much for doing the job you have been doing.

These antiquated union agreements that you are talking about come about because they do not negotiate. We are willing to sit down and talk. We have had countless meetings canceled or the meeting, you walk in, five minutes later it's like we decided not to talk anymore. We are trying to negotiate in good faith. They have given a lot of unions guaranteed jobs for life. In return we have given them no raises, we have allowed them to abolish jobs, contract work out, mix crafts. Now we are giving them flexibility. What are they giving us?

This railroad is not going to be abandoned. Like you say, if there was a hundred and some odd people interested in buying the line, does that sound like a line that is going to be abandoned?

Referring to the Providence & Wooster, I do not know anything about their bid, just what I read in the paper, too. They are a regional railroad, a profit-making railroad. Is the CN afraid of competition if they take over this line? We'll give these shippers maybe even better business than what we give them now. They are going to put more money into the railroads than what they are putting in now.

I am just sad and downtrodden that they come in here and say we are giving you nothing, we are going to go under a Section 10901, which this has nothing to do with.

Thank you.

Senator JEFFORDS. We have two more, Dan and Tom, are you here? Would a couple of you give them a seat? OK. Will you go ahead and give us your name and you have a statement you want to put in also and we will make it a part of the record. You do not have to read it, or you go right ahead. You have 6 minutes.

Mr. BUSHEY. OK. This will not take 6 minutes.

Senator JEFFORDS. Your name, please?

#### STATEMENT OF THOMAS BUSHEY, CV RAILROAD EMPLOYEE

Mr. BUSHEY. My name is Thomas Bushey. I am an employee on the CV. I am a car inspector on the CV, have been for 16 years, and in that time I get to—you cannot help but think about your job in other ways than just inspecting cars and the job is—we are paid to think about safety. And nothing that I have heard much has been said about CV except from Mr. Flohr. He is first to jump on safety and he does it so much that we tend to wonder why.

When we first met Mr. Flohr the first thing he said was there is the exits, this and that. He said a lot about how safe their railroads are. But I submit that the RailTex safety claims are not real-



istic, because, one, the condition of the RailTex Lines is such that 65 percent of their track has a 65 miles per hour or slower speed limit and two, RailTex employees may be intimidated not to report accidents of having happened on the job for fear of being labeled as not being a team player.

Now if RailTex cuts 100 employees on the CV and operates with only 78 workers, safety will suffer. By the way, any talk of keeping more than 78 has to do with car repair and so on, and not operating employees. Bruce Flohr hasn't and apparently will not give a job breakdown on the 78, but we have been able to get a couple bits of information out of these people.

First, RailTex intends to run the CV with a total of 15 maintenance employees, down from 50 today. This information was obtained by Anna Lambert before the May 31st meeting of RailTex right here in St. Albans. In Anna's signed statement which I have here, she described asking RailTex board member Sandy Cramer before the meeting how many maintenance employees were planned. Her answer was 15 for the whole CV.

Now a lot of you know that ConRail was just struck by its maintenance of way employees over the issue of safety. Why were they upset? Four of them on ConRail were killed by trains within the last year and four others were killed elsewhere within the country in the last year. Cutting down to 15 of these guys on a road this size is cutting too close to the bone.

Next Bruce Flohr said, and we have it on the tape, and I will play it for you now—not right now, let me just get to my place. He said, we have it, that RailTex uses the questionable practice of allowing one person to run a train with another following in a pickup truck. And I will play that for you now. [Played tape.]

Senator JEFFORDS. Excuse me. Where did that come from and who is that speaking?

Mr. BUSHEY. OK. That was Bruce Flohr and I do not have any proof that it was Bruce Flohr except that you might recognize his voice. That was stated at the May 31st Town Meeting here in this room by Bruce Flohr.

Now I have pictures here of what can happen using that practice. I assume I have got them. They were blown up just by laser copier. This accident happened on the Massachusetts Central Railroad last month. One of the railroads owners was the only person aboard and he failed to notice a switch lined for the siding. This is the bottom of the rail car that he ran into on the siding. This is the engine, and this is just another view of the same accident. You can see it was a pretty good impact. Even though the engine started going onto the siding. The engineer, we will call him, started going onto the siding and realized what had happened immediately of course. He threw the train into emergency, but it takes a while for a freight train to stop.

This particular train had 11 cars with two engines. And after he threw the brakes into emergency, he ran out the door and jumped off. He broke his leg and was bleeding, I guess he did not lose enough blood that he could not crawl up onto the engine and radio for help. He was lucky that way I guess.

The white glob here that you see is actually white beads of plastic, that is all that is. It is a hopper car.

Now on another day in another place, this hopper full of plastic could be full of chlorine or anything else.

Here is another point. How many clerk positions will be cut by RailTex? As it is right now the trains are actually out of St. Albans where the clerks are. Commonly journals aren't complete for trains coming north, so you could have a situation where there was a derailment and the crew would not be able to tell fire fighters what was on the train.

Getting back to Bruce Flohr, I have a video here, I do not have a TV, but it's a video of Mr. Flohr's morning meeting with the CV employees on June 1st, the day after his town meeting on the 31st the night before. Jim Murphy was setting up his camera just as Mr. Flohr started speaking, so he did not get the very beginning. The funny thing was the first words he did get were Mr. Flohr saying Oh, I forgot, the first thing I usually talk about is safety, and he goes on to point out the exits in the way he does it and so on. My point is anyone can forget safety, and on the railroad when you are pressed for time and trying to rush due to not enough employees, this is what happens. And this is the time to consider not making it too easy for short lines like RailTex to go in and start cutting.

Thank you.

Senator JEFFORDS. Thank you. I certainly agree that safety comes first. I think we can all agree on that.

Dan. What happened to Dan? I guess Dan decided not to testify. All right.

I want to thank everyone for coming. Yes, you had something else you wanted to say?

Mr. PHILLIPS. My name is Ernest Phillips. One important thing I left out, in the negotiations and the offer that was given to us, that was only on the condition that all the unions would drop all opposition to the RailTex buyout of the CV and walk hand-in-hand with them to the ICC and not oppose a 10901 sale.

Senator JEFFORDS. I appreciate that information and I appreciate everyone coming and sharing this information with us. And for those of you who are listening, I just want to make a couple of comments before we close and I will let Congressman Sanders make comments also. I suggest you take a look at where we are in the status of things. There has been no offer or no submission to the ICC yet, so there is nothing that is firm.

No. 2, I think you will find the ICC certainly has changed in its membership, I think times have changed, and I think we have their assurances that they are going to take a close look at this and any provisions that are made for termination of employees and what the conditions of sale are. You will have a right and any party as we pointed out will have a right to protest any attempt to grant an exemption; you will have the right to ask for a removal of any exemption that is granted if circumstances are correct, and that there can be a full hearing held on these matters if the circumstances warrant. So I'd say keep your powder dry a little bit.

I certainly would urge everyone to negotiate in good faith on all sides and hopefully an agreement can be reached which will reassure people that the line will stay in place, that the workers, as many as possible will have a job and that those that do not will

get a fair reconciliation as far as the exemption goes. So I hope you will keep that in mind, that this is the beginning of the process, and I think it might be unwise to get too set on feeling one way or another about the participants.

Yes? If you want to make another comment, please give your name again.

Mr. DENAULT. It may seem a little unorthodox, I suppose, but I appreciate the chance to talk to you about this particular concern. Jay Denault speaking. Recently our folks in Washington have informed us that there was appropriations in the Department of Transportation to cut out ICC funding and that is of particular concern for us.

Could you possibly describe for us how you may envision the possible elimination of the ICC? And after that, could you maybe give us a sense of where you stand on this issue?

Senator JEFFORDS. Sure. I am glad you brought that up. I have voted to merge the ICC and put it into the Department of Transportation. The functions of the ICC will not be terminated. There is no question about that as far as the Commission itself and the hearings and this sort of process.

The thought is that with deregulation of the railroads—I mean of the trucking industry, much of the work of the ICC is pretty much gone by. There still are important functions which must be maintained under the government, and I do not know of any attempt to eliminate the oversight and the caring of what goes on in negotiations which are relevant here today, but rather to transfer it to some other entity to try to downsize the size of government.

Mr. DENAULT. For the last part of that question that bill will be coming before the Senate again this year.

Senator JEFFORDS. Transportation Appropriations Bill?

Mr. DENAULT. Yes.

Senator JEFFORDS. Yes, it will. The subcommittee has not come out with their bill yet.

Mr. DENAULT. It was essentially my understanding that they do intend to and already have cut \$18 million out of the budget for the ICC this year.

Senator JEFFORDS. I am glad you brought that up. What I am going to do is to find out what the intent is, that is the money, and the question is the authority is not taken away by doing away with the money but obviously it does hinder performance if you are not being paid. I will get for you. I know General Counsel is interested in that.

Mr. DENAULT. Well obviously, we are as interested as he is because we feel very strongly that the ICC does play a very strong role.

Senator JEFFORDS. Sure. I will get the plans if there are any and I can assure you that nothing will be done to undermine the ability of the functions that we are talking about here today.

Mr. DENAULT. Is it your intention then to impose that elimination of the—

Senator JEFFORDS. Well I am going to find out and I do not mind if it's consolidated, but I have got to make sure that your rights and the rights of people who would be under the ICC for these proceedings are fully protected.

Mr. DENAULT. Thank you, Senator.

Mr. SANDERS. Let me just say if I might that I congratulate this community with unanimity. I think we would not have gotten this far if the unions of this community had not stuck together, and I think we should continue to fight together. We are going to persevere in this thing and let's keep going forward.

Thank you.

[Additional material supplied for the record follows:]

#### PREPARED STATEMENT OF GOVERNOR HOWARD DEAN

Thank you for the opportunity to address your committee here today.

For a century, the Central Vermont Railway has been exactly that, a railroad run out of St. Albans and maintained by people who live in this State. This sense of a home-grown operation persisted even after the railroad was acquired by the Canadian National.

Part of the reason was that Central Vermont Railway headquarters remained in St. Albans. This meant that the people who made most of the decisions affecting the railroad's employees and its customers had a Vermont stake.

This was most apparent several years ago, when the State worked with the congressional delegation and Amtrak to preserve Vermont's only passenger train, the Montrealer.

This was done through the unusual, perhaps unique condemnation by Amtrak of a stretch of deteriorating track in southeastern Vermont that was owned by another railroad.

The State of Vermont approved spending more than \$1 million as compensation for the condemnation. Central Vermont Railway put up cash, and accepted ownership of the Connecticut River line, and Congress approved Senator Leahy's proposal to help pay for the track upgrade.

This arrangement survived a U.S. Supreme Court challenge to the condemnation authority. The compact succeeded in no small degree because the Vermont legislature, which had to approve the State funds, viewed the CVR as a State railroad.

Now, as Canadian National, apparently as a consolidation maneuver, proposes to sell its profitable Vermont subsidiary, we are faced with a very different prospect. The favored buyer is a Texas concern that owns more than 20 railroads around the country.

The concern is that Vermonters who have spent their careers with the railroad are going to be put out of their jobs, and the essential decisions that must be made on how to run this railroad will be made in Texas, not Vermont.

There is an irony in that the company that owns more than a score of lines similar to the CVR is expected to try to sidestep responsibility for labor settlements to displaced Vermont employees by claiming that it is not a railroad company.

This claim can be submitted to the Interstate Commerce Commission because of a regulatory loophole big enough to accommodate the largest Central Vermont Railway locomotive.

I would argue that a company that buys railroads, operates them, and profits by their operations qualified as a railroad company.

I would argue that this company therefore must be denied use of the loophole.

I would argue that this company has an obligation to protect its discharged employees, and I would hope that this railroad would move to award as many jobs as possible to those Vermonters who have given their working lives to the Central Vermont Railway. Thank you.

Senator JEFFORDS. Thank you all for coming and I appreciate very much the courtesy of the Parish here for allowing us to have the hearing here and I want to thank you all for coming, and with that the hearing is officially closed.

[Whereupon, at 7:30 p.m., the committee was adjourned.]





